

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19552 of 2015

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Lalan Prasad Son of Late Babu Ram Prasad, Resident of Village - Parariya, P.O. Sarsar, Police Station - Siwan Muffasil, District - Siwan, at present posted and working as an Assistant teacher in Govt. Kanya Primary School Sarsar, Anchal - Siwan, District - Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Siwan.
4. The Regional Deputy Director of Education, Saran Division, Chapra.
5. The District Education Officer, Siwan.
6. The District Programme Officer Establishment, Siwan.
7. The District Treasury officer, Siwan.
8. The District Accounts Officer, Siwan.
9. The Block Education Officer, Siwan, District - Siwan.
10. The Headmaster - cum - Drawing and Disbursing Officer, Govt. Kanya Primary School Sarsar, Anchal – Siwan, District-Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Umesh Kumar Mishra, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha, GA 7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-08-2024

1. Heard learned counsel for the parties concerned.
2. The petitioner has filed the present writ application for quashing the Government resolution contained in Memo No. 12 dated 05.01.2015, issued by the Joint Secretary, Education Department, Bihar, Patna and further, prayed for a direction to the respondents to relax Rule 11 of Bihar Elementary School Teachers Appointment Rules, 1991, as one



time measure and grant Matric Trained pay scale to the petitioner w.e.f. 01.10.2003, in accordance with the decision of a Division Bench of this Court in L.P.A. No. 412 of 2003 (Chandra Kant and others v. The State of Bihar and others).

3. The brief facts of the case is that the petitioner's father was posted as Assistant Teacher in Middle School, Pachalakhi, Block-Mairwa (Siwan), District-Siwan, who died in harness on 08.04.1998. Petitioner was appointed on compassionate ground on 27.05.1999 as Assistant Teacher in Primary School, Aurai, Anchal- Barhariya (Siwan).

4. Learned counsel for the petitioner submits that in 1991, rules for appointment of Elementary School Teachers were amended and new rules for appointment were framed, entrusting the responsibility of selection to the Bihar Public Service Commission. As per the eligibility criteria prescribed by the B.P.S.C. for the post of Assistant Teacher, the petitioner was sent for training course and he passed the second Teachers Training Examination on 31.07.2007 in his first attempt. After returning from the training, the petitioner was given Matric trained pay scale w.e.f. 04.02.2008.

5. Pursuant to the order passed by this Court in L.P.A. No. 412 of 2003, the benefit of Matric Trained scale w.e.f.



01.10.2003 was extended by one time relaxation of Rule 11 to Teachers appointed not only in 1994 but also to those, appointed till the year 2000 and to those who cleared the in-service training examination in June, 2005 or for those, who passed in the second time subsequently. He further argued that in L.P.A. 1459 of 2013 (Ramakant Yadav v. The State of Bihar and others) and other analogous cases, it has been held that the Teachers appointed under 1991 Rules, irrespective of the date of appointment but who cleared in-service training examination till June, 2005 or later in the second time constitute a class. Irrespective of the date of appointment, those who have not cleared the in-service examination till 2005 constitute a separate class excluding those who passed in the second attempt after June, 2005.

6. Thereafter, Joint Secretary, Education Department issued a Government resolution vide Memo No. 12 dated 05.01.2015, whereby untrained Teachers appointed under Rule 11 of 1991 Rules were given trained pay scale. The resolution states that untrained teachers with higher qualification (including those appointed on compassionate grounds), who appeared in Teachers Training Examination in 2004 but did not qualify in their first attempt or did not appear in the second



time, but qualified in TET 2007, such teachers are entitled to Matric Trained scale from the date of appearance in training examination in 2007. The contention of the learned counsel for the petitioner is that there was no laches on the part of the petitioner, as the petitioner was sent for teachers training examination lately, for which, he could not be made to suffer. He further submits that the writ application is covered by the order passed in L.P.A. 1459 of 2013.

7. On the other hand, learned counsel for the respondents argued that petitioner passed the second Teachers Training Examination in the year 2007, as such, he is entitled to Matric trained pay scale from the date of passing of the examination in terms of the impugned resolution and in fact, the petitioner has been given trained pay scale from such date.

8. I have heard learned counsel for the parties and have perused the materials on record. The impugned resolution has been issued on the basis of the order passed by the Division Bench of this Court in Chandra Kant and others (supra). The Division Bench has come to the finding that due to inability of the State Government to hold the required examination within a reasonable time, the appellants who were successful, have suffered undue hardship. In that view of the matter, when the



examination could not be held within two years in spite of directions of the Apex Court and even later, as per directions of this Court, we are of the view that the State Government which has the necessary powers, must take steps to relax Rule 11 of the Rules as a one time measure within a reasonable time and take a prompt decision to grant Matric trained scale to the teachers who have passed the in-service training examination in June, 2005 from any date which may be found suitable and reasonable so as not to affect such teachers adversely for the unusual delay in holding the training examination. It would be reasonable and appropriate to grant Matric trained scale to such teachers as indicated above from any reasonable date. The benefit of advancing the date for grant of Matric trained scale, as indicated above would also be made available to such teachers who may pass the training examination in the second attempt and for them, the date will vary but benefit should be on same lines as given to those, who have passed in the first attempt.

9. In Ramakant Yadav (supra), another Division Bench of this Court, taking note of the judgment rendered in Chandra Kant and others (supra), in paragraph 13, has observed that Chandra Kant (supra) is stated to have attained finality questioned by none. The benefit of one time relaxation under it



is available only to those who fall within the classification made in it as discussed above. The benefit is not available under it to the second category, who may have been appointed upto the year 2000 but who passed the in-service training examination after June, 2005.

10. Petitioner falls in the second category, as he passed in-service examination after June, 2005 i.e. in the year 2007 and has been given the Matric trained scale from the date of passing of the examination.

11. In view of the aforesaid discussions and the fact that the impugned order has been issued, pursuant to the order passed by the Division Bench in Chandra Kant and others (supra), I do not find any merit in the present writ application, as such, the same is dismissed.

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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