

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19091 of 2014

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Ramashankar Gupta S/o Sri Sheomuni Sah R/o Mohalla Salempur Dumra,
P.O. B.V. College, P.S.-Airport, Rajabajar, District Patna, presently posted in
Navsrijit Primary School Bank, Maner, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Director (Primary Education), Government of Bihar, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer (Establishment), Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amarendra Kumar, Advocate
For the Respondent/s	:	Mr. Prashant Pratap, G.P.-6
		Mr. Gyan Shankar, A.C. to G.P.-6

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 30-01-2024

1. Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief(s):

“(i) For commanding the respondents to grant matric trained scale of pay to the petitioners w.e.f. the date the other similarly situated untrained teachers who were granted trained scale i.e. 01.10.2003.

(ii) For commanding the respondents to grant all the consequential benefits.

(iii) For any other relief or reliefs for which the petitioners are entitled for in the facts and circumstances of the case.”



3. The case of the petitioner in brief is that on the recommendation of the Bihar Public Service Commission ('BPSC' in short), the petitioner was appointed as an Assistant Teacher in the district of Saharsa on 11.4.2000. He was sent for training in the 2000-01 session and having completed his training course successfully, examinations of the same were held in the year 2004. The result of the petitioner along with others were published on 20.6.2005. Subsequent thereto the petitioner completed his I.A. (Intermediate in Arts) in the year 2009 and B.A. (Bachelor of Arts) in the year 2012.

4. Learned counsel for the petitioner submits that pursuant to the decision of a Division Bench of this Court on 23.9.2010 in the case of Chandra Kant and others vs. State of Bihar and others (2010 (4) PLJR 732), the respondents came out with a resolution dated 29.7.2011 (Annexure-1). The resolution provided that the untrained teachers having higher qualification who cleared their teachers training examination in the first attempt will be granted matric trained scale w.e.f. 1.10.2003 and those who cleared their teachers training examination in their second attempt would be granted the scale w.e.f. the date they appeared in the examination. No amount would be recoverable from the teachers. Subsequently the respondents came out with



a letter dated 10.2.2012 (Annexure-2) whereby the benefits of the resolution dated 29.7.2011 was extended to all untrained teachers who were appointed in the year 1994, 1999 and 2000 including on compassionate grounds as per the Bihar Primary School Teachers Appointment Rules, 1991.

5. Learned counsel for the petitioner submits that the petitioner having successfully cleared his teachers training examination in the first attempt, his matric trained scale was fixed w.e.f. 20.6.2005 ie from the date of publication of the result of the training examination. The petitioner having completed his training in the 2000-01 session, the examination for the same was held after much delay in the year 2004 and the result thereof published on 20.6.2005. It is contended that the respondents cannot be permitted to take benefit of their own wrong of having delayed holding of examination and declaration of it's result. Placing reliance on the judgment in the case of Chandra Kant (supra), the petitioner prays that he be granted the matric trained scale at least from 1.10.2003 ie the date w.e.f. which the petitioners in the said case were granted the benefit. Learned counsel in support of his contention also places reliance on the Division Bench judgment of this Court in the case of Ramakant Yadav vs. State of Bihar and others (2014



(1) PLJR 423).

6. The application is opposed by learned counsel appearing for the respondents-State of Bihar who submits that at the time of his appointment on 11.4.2000, the petitioner was only a matriculate and he completed his I.A. in the year 2009 and B.A. in the year 2012. As such, the petitioner cannot be said to be a teacher with higher qualification and thus rightly got the benefit of matric trained scale from the date of passing of his training examination on 20.6.2005. Learned counsel further submitted that so far as the judgment in the case of Chandra Kant (supra) is concerned, the same is not applicable in case of the petitioner. The petitioners in the said case, though were untrained assistant teachers having been appointed in elementary schools however, all of them were possessing higher qualification of Intermediate, Graduate or Post Graduate which the petitioner of the instant case did not possess. They were granted matric trained scale for some period which was subsequently stopped and orders were passed for recovery in 20 equal instalments of the benefit/amount disbursed to them. It was on those facts that the said case was filed and it was in the peculiar facts of that case that the observation was made which is being wrongly relied upon by the learned counsel for the



petitioner herein. Learned counsel for the respondents further submitted that the allegation of discrimination is misconceived and misplaced. Benefit of matric trained scale was given only to those untrained teachers who possessed higher qualification. Grant of similar benefit to the petitioner would be treating two unequals as equal. Learned counsel finally submits that the State Government came out with a resolution dated 5.1.2015 taking into consideration the decisions of this Court in the case of Chandra Kant (supra) and Rama Kant Yadav (supra) as also the resolutions dated 29.7.2011 and 13.9.2013. It provides that those persons with higher qualification who were appointed as per the Bihar Primary School Teachers Appointment Rules, 1991 prior to 5.9.1997 ie the date of decision in SLP no.23187/1996 and who had cleared the training examination in their first attempt would be granted notional benefit of matric trained scale for the period 5.9.1999 to 30.9.2003 and financial benefits w.e.f. 1.10.2003. Those who had cleared their examination after 5.9.1997 but in their first attempt would also get the benefit of matric trained scale w.e.f. 1.10.2003. Those teachers who did not clear their training examination in the year 2004 or who did not appear in the training examination in the year 2004 but cleared the same in the year 2007 will be granted benefit of



matric trained scale from the date of the examination ie 31.7.2007. The resolution finally stated that the benefits granted to the teachers would be subject to the result of the review petition.

7. Having heard Mr. Amarendra Kumar, learned counsel for the petitioner and Mr. Gyan Shankar, learned A.C. to G.P.6 appearing for the State-respondents, the relevant facts for the purpose of the instant application are that on the recommendation of the BPSC, the petitioner was appointed as an Assistant Teacher in the district of Saharsa on 11.4.2000. He was sent for training in the 2000-01 session for which the examinations were held in the year 2004 and the results were published on 20.6.2005. The petitioner cleared his training examination in his first attempt.

8. The case of the petitioner in brief is that having completed his teachers training in the year 2000-01 session, the examinations for the same were held only in the year 2004. The delay in holding of the exams and publication of the result thereof on 20.6.2005 is solely attributable to the respondents and the petitioner cannot be made to suffer for the same and the respondents cannot take benefit of their fault by granting the financial benefits of matric trained scale to the petitioner only



from 20.6.2005. The contention being that either the petitioner be granted the benefits of matric trained scale from an earlier date or at least w.e.f. 1.10.2003 ie the date on which the petitioners of the case of Chandra Kant (supra) were granted the said benefit.

9. Coming to the decision in the case of Chandra Kant (supra), it may be stated here that Rule 11 of the Bihar Elementary School Teachers Appointment Rules, 1991 provides for appointment of trained candidate in matric trained scale and of untrained candidates in matric untrained scale. It further stipulates that the service of the untrained appointees will be terminated, if without sufficient reasons they did not participate in the training when required to do so and further after training, an examination shall be held and those candidates who failed therein will be afforded another opportunity. If they fail again then their services will be terminated. After passing of the examination, the candidates shall be granted the matric trained scale.

10. The learned Division Bench in considering Rule 11 of the Bihar Elementary School Teachers Appointment Rules held that there was no dispute with respect to the fact that the untrained teachers could get the higher scale only on fulfilling



the conditions prescribed in Rule 11 ie only on passing the training examination. However, at the same time, the learned Division Bench found merit in the submission advanced on behalf of the appellant in the said case that when the examination could not be held within two years inspite of the direction of the Apex Court, the State Government which has the necessary powers must relax Rule 11 of the Rules as a one time measure 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 accordingly directed the respondents to take appropriate decision in the light of the observations and directions indicated therein. Paragraph nos.30 and 31 in the judgment of Chandra Kant (supra) are reproduced herein below for ready reference:

“30. Coming to the last issue, we find merit in the submission advanced on behalf of the appellants 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, may be from the date when the period of two years fixed by the Apex Court for completing the training of such teachers expired without compliance or even from 1-10-2003, i.e. when actual payment in Matric trained scale was stopped. Keeping in view the requirements of Article 14 of the constitution, benefit of advancing the date for grant of Matric trained scale, as indicated above will also be made available to such teachers who may pass the training examination in the second attempt. For them the date will vary but benefit should be on same lines as given to those who have passed in the first attempt.

31. We, accordingly direct the respondents to take appropriate decision in the light of observations and directions indicated above within three months from today.”

11. Subsequently, in the case of Ramakant Yadav vs. State of Bihar and others (2014 (1) PLJR 423), the question arose as to whether the benefit for grant of matric trained scale from 1.10.2013 to teachers appointed as untrained is available only to those appointed in the year 1994 and earlier or will it also be available to untrained appointees after 1994 provided they had passed the in-service training examination till 2005.



The Division Bench of this Court took note of the judgment in the case of Chandra Kant (supra) and held that the benefit of matric trained scale from 1.10.2003 was extended for one time relaxation of Rule 11 not only to persons appointed only in 1994 but also to those appointed till the year 2000 who had cleared the in-service training examination in June, 2005. The Division Bench taking note of the fact that the judgment in the case of Chandra Kant (supra) had attained finality, not having been questioned by anyone, in paragraph no.7 in the case of Ramakant Yadav (supra) proceeded to hold as follows:

“7. After Chandrakant (supra) the respondents issued notifications dated 29.7.2011 and 10.2.2012. Cumulatively the benefit of Matric trained scale from 1.10.2003 was extended by one time relaxation of Rule 11, to persons appointed not only in 1994 but also to those appointed till the year 2000 but who had cleared the in-service training examination in June, 2005, or from the relevant date for those who passed in the second attempt.”

12. So far as the facts of the instant case is concerned, the petitioner was appointed as an Assistant Teacher on 11.4.2000. Though he was sent for training in the 2000-01 session, however, the examination for the same was conducted by the respondents only in the year 2004 and the result of the same published on 20.6.2005. The petitioner had cleared his training examination in his first attempt.



13. In view of the facts and circumstances of the case as also in view of the observation of the Division Bench of this Court as held in paragraph nos.30 and 31 in the case of Chandra Kant (supra) as quoted herein above and in paragraph no.7 in the case of Ramakant Yadav (supra) as quoted herein above, this Court is of the opinion that the petitioner has made out a case for grant of relief in similar terms as in the case of Chandra Kant (supra) ie for grant of trained scale at least from 1.10.2003.

14. Thus, in the facts and circumstances of the case, the writ application is allowed with a direction to the respondents to grant matric trained scale to the petitioner from 1.10.2003 and the financial benefits be paid to the petitioner within a period of four months from the date of receipt/production of a copy of this order.

15. The writ application stands allowed.

(Partha Sarthy, J)

Saurabh/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.01.2024
Transmission Date	

