

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13716 of 2016

Intekhab Alam son of Md. Muzaffar Alam resident of Village - Belahiyan
Bakhri, P.O. - Kansara, Block - Sursand, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Dept. of Education,
Govt. of Bihar, Patna
2. The Director, Primary Education, Dept. of Education, Govt. of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Programme Officer Estb., Sitamarhi.
6. The Block Education Officer, Dumra, Sitamarhi.
7. The Headmaster, Primary School Badi Bazar Urdu, Sitamarhi.
8. The Executive Officer-cum-Member Secretary, Nagar Parishad, Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Ashhar Mustafa, Advocate
For the Respondent/state :	Mr. Kumar Alok, SC 7
	Mr. Rakesh Kumar, AC to SC 7

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 22-10-2024

1. The present application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to fix the salary of the petitioner in furtherance of resolution no. 1830 dated 11.08.2015 after granting him pay protection as per the notification no. 429 dated 22.06.2012 under clause 8.

2. The facts of the case in short is that the petitioner was initially appointed as Panchayat Teacher on 05.02.2007 at Primary School, Madhubani Tole, Panchayat:- Bakhri, Block- Bathnaha, District- Sitamarhi. The Education Department issued



a notification no. 429 dated 22.06.2012 in exercise of power under Rule 17 of the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2012 and Bihar Nagar Nikay Primary Teacher (Appointment and Service Condition) Rules, 2012 for appointment of Teachers in primary schools in the year 2012-2013. Clause 8 of the said notification prescribes that previously employed teachers, who have passed the TET examination can also apply for fresh appointment after getting their application duly forwarded from the first appointing authority. It also provides that in such case, second appointment shall be treated as first appointment and except for pay protection past services shall not be considered for any other benefits.

3. The petitioner had passed the TET examination in the year 2011. Accordingly, he sought permission from the Panchayat Secretary to participate in the selection process, which was accorded to him vide memo no. 08 dated 28.06.2012. He participated in the fresh selection process of 2012-2013 for appointment as Nagar Teacher in which he was selected as Basic Grade Urdu Nagar Teacher at Primary School, Badi Bazar, Sitamarhi vide memo no. 1621 dt: 08.02.2014 issued by Executive Officer -cum- Member Secretary, Nagar Parishad,



Sitamarhi. After being relieved from his first appointment the petitioner joined the new school on 18.02.2014 with salary of Rs. 9600/-, however, salary of other teachers was fixed at Rs. 9000/-. Since the petitioner was getting salary in previous school at Rs. 9600/- as such, he was given pay protection as per clause 8 of the notification dated 22.06.2012.

4. The State Government vide departmental resolution no. 1530 dated 11.08.2015 came out with a new scheme for grant of pay scale to teachers with effect from 01.07.2015. The pay scale fixed for primary teacher as per the resolution dated 11.08.2015 is as follows:-

क.स.	पदनाम	संख्या	वेतनमान	ग्रेड वेतन
1	2	3	4	5
1	प्राथमिक शिक्षक (अप्रशिक्षित)	62031	5200-20200	0
2	प्राथमिक शिक्षक (प्रशिक्षित)	245344	5200-20200	2000
3	प्राथमिक शिक्षक (स्नातक ग्रेड अप्रशिक्षित)	14000	5200-20200	0
4	प्राथमिक शिक्षक (स्नातक ग्रेड प्रशिक्षित)	22739	5200-20200	2400
कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)		344114		

5. The petitioner filed representation requesting to grant pay protection and other benefits arising out of the said circular, but the grievance of the petitioner has not been redressed by the respondent authorities.

6. Learned counsel for the petitioner submits that participation of the petitioner in the fresh selection process and



his consequent appointment as Nagar Teacher was subject to the condition that pay protection would be given for his past services. Thus, the basic condition on which the petitioner was appointed as Nagar Shikshak cannot be taken away. Since no column has been specified in the software to indicate the date of joining in the first appointment unit, the petitioner is not able to insert that date in the pay fixation slip. The absence of joining date in the first appointment unit in the software deprives the petitioner of the benefit of pay protection being given to him. Hence, the limitation of the software cannot be used to deprive the petitioner of the benefit of past service.

7. Learned counsel further argued that it is true that by virtue of resolution dated 11.08.2015 a new scheme for grant of pay scale was introduced by the State Government with effect from 01.07.2015, however, even in this new resolution there are express provisions for grant of annual increment @ 3% for the past service rendered by the teachers and the said benefit would automatically accrue to the petitioner as well.

8. At this stage, learned counsel submits that petitioner is not pressing his claim for pay protection, however, he is entitled for grant of annual increment as prescribed in clause 2.3 and 2.4 of the resolution dated 11.08.2015 and grade pay of Rs. 2000/-



without completion of two years of service. There is nothing in clause 2.3 to suggest that the benefit of grade pay of Rs. 2000/- is extendable to trained teachers only upon completion of two years of service to be computed from the date of joining. The above condition is indicated in clause 2.8 of the resolution, however, the State authorities have erred in giving isolated reading to clause 2.8 whereas the same should be read with clarificatory order later issued vide memo no. 1811 dated 22.09.2015 at clause 6.

9. On the other hand, learned counsel for the respondents argued that the concept of consolidated pay admissible to teachers appointed under the Panchayati Raj system in the year 2006 has been changed to the system of pay scale vide resolution no. 1530 dated 11.08.2015 wherein there is no provision for pay protection. Further, as per letter no. 2153 dated 05.09.2017 of Deputy Secretary to the Government, in query no. 5 it has been mentioned that the benefit of pay protection will not be provided to those teachers, who were previously working in some other employment unit in view of implementation of new pay scale.

10. Clause 2.8 of the resolution dated 11.08.2015 specifies that niyojit primary trained teachers will be given grade pay



after completion of two years of service and before two years (from the date of joining) of service as the Trained Niyojit Primary Teachers they will be given the pay scale of untrained niyojit primary teachers. Therefore, the petitioner is given the pay scale as untrained niyojit primary teacher till two years from the date of his joining i.e. from 18.02.2014 till 17.02.2016. Thereafter, the petitioner has been granted the pay scale and grade pay of trained niyojit primary teacher from 18.02.2016 and as per the resolution the petitioner has been granted grade pay of Rs. 2000/- from 18.02.2016 i.e. the date from which the petitioner has been considered as trained niyojit teacher for the purpose of grant of grade pay as per the resolution dated 11.08.2015.

11. He further argued that clause 2.3 of the resolution dated 11.08.2015 provides that annual increment @ 3 % would be given to the trained niyojit primary teachers for every three years of their past service, however, the petitioner attained training on 19.01.2014, prior to this date he was working as an untrained niyojit primary teacher in the Primary School Madhubani Tole. Therefore, the petitioner cannot be granted increment @ 3% per annum for every three years of past service as enumerated under clause 2.3 of the resolution.



12. Upon hearing learned counsel for the parties the fact which emerged for determination of the issue is the grant of increment @ 3% per annum to the petitioner for past service rendered by him and grant of grade pay without completion of two years of service as trained teacher.

13. Insofar as the issue of grant of pay protection to the petitioner is concerned, learned counsel has submitted that he is not pressing the claim of pay protection in view of introduction of pay scale instead of consolidated pay granted earlier.

14. Clause 2.3 of the resolution 11.08.2015 says that trained teachers are entitled to the benefit of one annual increment for every three years of past service. Clause 2.4 of the resolution also prescribes that benefit of annual increment @ 3% for every three years of past service is payable to untrained teachers.

15. It is clear from bare reading of clause 2.3 & 2.4 of the resolution dated 11.08.2015 that annual increment @ 3% for every three years of past service is payable to trained teachers and untrained teachers both.

16. The petitioner was appointed as panchayat teacher in the primary school in 2007 and subsequently he acquired the training in 2012 / 2014. The date of completion of training is not



relevant for the purpose of grant of annual increment in view of clause 2.4 of the resolution which allows benefit of annual increment to untrained teachers also. The fact that the petitioner has rendered past services as Primary Teacher in the Panchayat and as Primary Nagar Shikshak before coming into force of the resolution is not disputed.

17. Accordingly, in my considered view the petitioner is entitled for annual increment @ 3% per annum for every three years of past service rendered by him as Primary Teacher.

18. Insofar as the grant of grade pay of Rs. 2000/- is concerned, as per clause 2.8 of the resolution, the benefit of grade pay of Rs. 2000/- is extendable only to trained teachers subject to completion of two years of service (to be counted from the date of joining). In the first two years a trained teacher would be treated as and given the pay scale of untrained teacher.

19. The petitioner was appointed as trained niyojit nagar primary teacher on 18.02.2014 in terms of clause 8 of the notification no. 429 dated 22.06.2012. Clause 8 of the notification specifically provides that second appointment as primary nagar teacher shall be treated as first appointment irrespective of the date of training. As per clause 2.8 which is unambiguous a trained teacher is entitled to be granted grade



pay after completion of two years of service as a primary teacher and before that he would be entitled for pay scale of Rs. 5200-20200/- only. After introduction of pay scale vide resolution dated 11.08.2015 entirely a new scheme for grant of pay scale for teachers was introduced by the State Government with effect from 01.07.2015.

20. The specific stand of the respondent / State is that the petitioner completed his two years of service from the date of his joining from 18.02.2014 on 17.02.2016, and thereafter, the petitioner has been granted pay scale and grade pay of trained niyojit primary teacher i.e. from 18.02.2016.

21. The argument of learned counsel for the petitioner is that if clause 2.8 is read with clause 6 of the clarificatory notification dated 22.09.2015, there is no requirement to wait for two years for grant of grade pay to the trained niyojit primary teacher is preposterous and is not sustainable.

22. Upon reading clause 2.8 with the clarificatory notification at clause 6, there is no hesitation in arriving at the conclusion that grade pay of Rs. 2000/- is payable to the trained teachers only after completion of two years of service irrespective of the date of training.

23. Accordingly, in my considered view, there is no



infirmity in the State action for grant of grade pay of Rs. 2000/- to the petitioner after completion of two years of service i.e. with effect from 18.02.2016.

24.Considering the aforesaid discussions and conclusions, this writ application is partly allowed.

25. The respondent authorities are directed to pay 3% annual increment to the petitioner for every three years of past service rendered by him starting from his initial appointment in the year 2007. The consequential monetary benefits along with admissible arrears of pay shall be paid within a period of three months from the date of receipt / production of a copy of this order.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	10-09-2024
Uploading Date	22-10-2024
Transmission Date	NA

