

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8347 of 2023

1. Ashok Kumar Son of Late Gopal Saw, Resident of Ashok Vihar Colony, Naily Road Bipas, South of Shiv Temple, Maranpur, P.O.- Chanchaura, P.S.- Vishnupad Gaya, District- Gaya Retired as Headmaster MS Rediwar (Mohanpur) Gaya.
2. Lakshmi Narayan Pandey Son of Late Nageshwar Pandey, Resident of Ashok Vihar Colony, Naily Road Bipas, South of Shiv Temple, Maranpur, P.O.- Chanchaura, P.S.- Vishnupad Gaya, District- Gaya Retired as Headmaster MS Ghughritand, Nagar Nigam, (South), Gaya.
3. Satya Prakash Son of Late Baijnath Singh, Resident of Mohalla Gewal Bigha Devi Sthan, Police Line Road, P.S.- Rampur, P.O.- Sahmir Takiya Gaya, District- Gaya, Retired as Headmaster Alakhdev MS Guraru, Gaya.
4. Gyan Datt Bhagat Son of Late Ram Swarath Bhagat, Resident of Village- Khaira Khurd, P.O.- Sao Kala, P.S.- Amas Gaya, District- Gaya, Retired as Graduate Trained Teacher at MS Pindra, Amas, Gaya.
5. Satya Das Son of Late Hari Das, Resident of Sher Ghati Chak Par, Ward No.6, Ward No. 6, P.O. and P.S.- Sher Ghati Gaya, District- Gaya, Retired as Graduate Trained Teacher at MS Nadiyavan, Gurua, Gaya.
6. Firoz Jahan Wife of Zafar Alam, Resident of House No. 150357, Ground Floor, Road No. 17, New Karim Ganj, P.O.- Karimganj, P.S.- Civil Lines Gaya, District- Gaya, Retired as Graduate Trained Teacher at Gaya MS, Gaya.
7. Krishna Mohan Kumar Son of Late Sri Gopal Krishna, Resident of Village Orail, P.O.- Amethi and P.S.- Wazirganj Gaya, District- Gaya, Retired as Headmaster, MS Aropur, Wazirganj, Gaya.
8. Ramchandra Ravidas Son of Late Panchoo Ravidas, Resident of Village- Khiktiya, P.O.- Mirjapur Husainchak, P.S.- Meskaur, District- Nawada, Retired as Headmaster, MS Kenardih, Wazirganj, Gaya.
9. Prabha Kumari Wife of Ashutosh Prasad Singh, Resident of Village Kandha, P.O.- Khanpur, P.S.- Wazirganj Gaya, District- Gaya, Retired as Headmaster, MS Pura, Wazirganj, Gaya.
10. Arun Kumar Son of Late Chandra Shekhar Singh, Resident of Village Barat, P.O.- Baijnathpur, P.S.- Sitamarhi, District- Nawada, Retired as Assistant Teacher, MS Karisowa, Wazirganj, Gaya.
11. Shivbalak Kumar Son of Late Domi Das, Resident of Village Tali, P.O.- Tarwan, P.S.- Wazirganj, District- Gaya, Retired as Headmaster, MS Mahugain, Rasalpur, Wazirganj, Gaya.
12. Dilip Kumar Singh Son of Late Ramdas Singh, Resident of Village Malthiya, P.O.- Bishunpur, P.S.- Wazirganj Gaya, District- Gaya, Retired as Headmaster MS Bhojpur, Wazirganj, Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.



2. The Principal Secretary, Department of Education, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director (Primary Education), Department of Education, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The District Education Officer, District- Gaya.
5. The District Program Officer (Establishment), District- Gaya.
6. The District Accounts Officer, Gaya.
7. The Treasury Officer, Gaya Treasury, Gaya.
8. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s : Mr. Prabhakar Jha, GP-27
For the Accountant General : Mr. Chaitanya Swaroop, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 09-01-2024

Heard Mr. Avanindra Kumar Jha, learned counsel for the petitioners, Mr. Prabhakar Jha, learned counsel for the State and Mr. Chaitanya Swaroop, learned counsel for the Accountant General, Bihar.

2. Altogether twelve petitioners, who were appointed as Assistant Teachers (District Cadre) in Elementary Schools (Primary and Middle) in the different schools in the district of Gaya, superannuated in between 2021 to 2023, the particulars of which have been mentioned in para. 4 of the writ petition, have filed the present writ petition to hold and declare the case of the petitioners is squarely covered by the judgment and order of this Court dated 23.09.2022 in C.W.J.C. No. 2783



of 2021 (Annexure-7) as well as judgment and order dated 09.11.2022 in C.W.J.C. 10900 of 2022 (Annexure-10) wherein this Hon'ble Court has set aside the order of recovery and further directed the State respondents to make refund of the recovered/deducted amount forthwith; And consequent upon such declaration further for quashing of the part of the Annexure-8 Series and 9 series, whereby and whereunder the concerned respondents, on the basis of the objections being raised by the office of Accountant General (A & E), Bihar have issued orders for recovery/deduction of the alleged excess payment, made earlier, on account of pay fixation made on the basis of schedule-II and State Government resolution no.8921 dated 07.12.2018 (Annexure-5).

3. It is submitted on behalf of the petitioners that the issue with regard to recovery of alleged excess payment from the gratuity amount of post retiral benefits of the petitioners, apart from dehors the orders/directions of this Court is also not justified in the light of the order of the Hon'ble Court dated 31.03.2011 rendered in C.W.J.C. No. 6139 of 2007, duly affirmed up to the Hon'ble Supreme Court, upholding the grant of financial progression, upon completion of 12 years and 24 years of service, leading to issuance of Memo No. 289 dated



22.02.2019 by the Education Department, Government of Bihar whereby and whereunder the benefit of Financial Progression (Grade Pay 4200/- to 4600/-) upon completion of 12 years of service has been extended to the petitioners and other similarly situated persons across the State of Bihar. The decision of the respondent authorities of the Education Department was further subjected to amendment vide Memo No. 1160 dated 03.09.2019 and it is further clarified vide letter no. 432 dated 20.04.2020.

4. By referring the letter no. 432 dated 20.04.2020, it is submitted on behalf of the petitioners that the respondents in an unequivocal terms accepted that the petitioners are entitled to the benefit after completion of 12/24 years of their respective services. He, thus, submitted that in view of the aforementioned letters, grant of 1st Financial Progression in respect of the petitioners and similarly situated persons have been restored upon completion of 12 years of service of their initial date of appointment, however, basing upon resolution No.8921 dated 07.12.2018 without affording any opportunity of option to the petitioners, the District Education Officer/District Programme Officer (Establishment), Gaya directed the Headmasters of all the Chinhit Middle Schools to fix the pay of the petitioners and all other persons in accordance with the State Government



Resolution No. 8921 dated 07.12.2018. Accordingly, the benefit of aforementioned resolution was accorded to the petitioners and all other similarly situated persons by fixing their pay as per schedule-II of the 6th Pay Revision and the arrears of salary were also released.

5. It is further submitted that the issue of applicability of Resolution No. 8921 dated 07.12.2018 and entitlement of entry pay as per schedule-II was raised in C.W.J.C. No. 5000 of 2020. Consequent thereupon, the Department of Finance, Government of Bihar came out with a clarification, as contained in Memo No. 5770 dated 10.11.2020 that the teachers of the Elementary schools are not entitled for the benefit of entry pay, as envisaged in the Resolution No. 8921 dated 07.12.2018. The aforesaid Memo No. 5770 dated 10.11.2020 came to be challenged in C.W.J.C. No. 2783 of 2021 and other analogous cases, which finally came to be dismissed by this Court vide order/judgment dated 23.09.2022 in the following terms:

“28. In the opinion of this Court, therefore, merely because the decision would affect several teachers who have been wrongly granted said benefit and who have also retired, illegality can not be allowed to be perpetuated.

29. The prayer to quash the letter,



dated 10.11.2020, is therefore liable to be rejected.

*30. However, in the case of Syed Abdul Quadir (supra) the Supreme Court examined whether recoveries are required to be made in such circumstances and found that the fault does not lie with the individual teachers to whom the benefit has already been advanced and, therefore, any amount which has already been released is not required to be recovered. The view expressed in the case of Syed Abdul Quadir has been reiterated by the Apex Court in the case of **State of Punjab & Ors. Vrs. Rafiq Masih (white washer) & Ors.** reported in (2015) 4 SCC 334 and further again reiterated in the case of **Thomas Daniel Vrs. State of Kerala & Ors.** reported in 2022 SCC Online SC 536 wherein it has been held as under :*

“14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.”

31. In view of the above, the contention raised by the petitioners of having benefit of ACP Scheme or MACP Scheme fails and the order passed by the respondents, dated 10.11.2020 and consequential orders thereto are upheld holding that the petitioners would only be entitled to the benefits



granted to them under Circular, dated 16.11.2000.

32. However, it is further held that the petitioners and other teachers who were wrongfully granted benefit of ACP/MACP would have to get their pay fixation revised and if they have retired, their pension would also be accordingly revised. But, no recovery shall be made for the extra amount which they have received

33. All writ petitions are accordingly decided. No costs."

6. The petitioners further relied upon the judgment rendered by this Court in C.W.J.C. No. 10900 of 2022 wherein this Court has been pleased to set aside the order of recovery and further directed the State respondents to make refund of the recovered/deducted amount forthwith.

7. A counter affidavit has been filed on behalf of the respondent State authorities and referring to the judgment rendered in the case of **Kishor Kumar and Others Vs. The State of Bihar & Others** (C.W.J.C. No. 4791 of 2020) submission has been made that in an identical matter, learned coordinate Bench of this Court keeping in view the nature of the post, which the petitioners of the said writ petition were holding, being above class-IV and Class-III does not find any reason to stay the recovery. The learned coordinate Bench further held that law laid down in **State of Punjab Vs. Rafiq Masih (White**



Washer) (2014) 8 SCC 883 shall have no application. However, considering the Covid situation it was directed that the recovery shall be made in ten equal installments so that the petitioners do not face financial crunch during the pandemic.

8. At this stage, learned counsel for the petitioners submitted across the Board that the very reliance of the petitioners [**Kishor Kumar and Others Vs. The State of Bihar & Others** (C.W.J.C. No. 4791 of 2020)] made on behalf of the learned counsel for the State is wholly misconceived, as apart from the fact that the petitioners were the teachers of Lower Sub-ordinate Education Service Cadre posted as Lecturer in different District Institute of Education and Training, they have been allowed MACP and thereafter again they were promoted by extending one further increment, which would be in addition to what the petitioners have received on completion of 20 years of service. Thus, taking note of the aforesaid fact, the learned court has observed as follows:

“In lieu of the promotion MACP is granted, where after if promotion is given, the person continues in the same pay scale. Thus, if suppose the petitioners would have been granted MACP and still the pay scale is lessor than the pay scale of the higher post on which he is promoted, he would get the additional benefit. However, if



the pay scale of MACP and that of promotion post is same, there is no occasion to grant him increment twice. In fact, if the MACP is granted, the concerned persons starts getting a higher pay which is admissible to the post on which he would otherwise have been promoted. If he is later on promoted, he gets the increment of the year in the said pay but does not get the additional increments. The explanation given by the Bihar Government is also inconsonance with above. In fact, it has been made very clear in the MACP scheme itself, as pointed out by learned counsel, that additional increments could not be granted on regular promotion to a person who has already been granted MACP.

In view of the above, no case for interference is warranted. The writ petition is found to be devoid of merits. The order dated 03rd February, 2020 does not call for any interference.”

9. Learned counsel for the petitioners, thus, submits that so far the petitioners are concerned, they have been accorded the benefit of ACP/MACP w.e.f. 07.10.2021 vide Resolution No. 1071 issued by the Government of Bihar, Department of Education, as such in their cases, there is no applicability of the ACP/MACP Rules by the time they have been given the benefit of financial progression and, now, all the more the petitioners have already superannuated.



10. He next submitted that the case of the petitioner is entirely covered by the judgment rendered by this Court in the case of **Chandrakant & Ors. Vs. The State of Bihar & Ors.** (CWJC No. 2783 of 2021) and other analogous cases.

11. This Court finds substance in the submissions made on behalf of the learned counsel for the petitioners, as the case of the petitioners are squarely covered by the judgment referred by the learned counsel appearing on behalf of the petitioners, thus, has no hesitation to hold and declare that the case of the petitioners is squarely covered by the judgment of this Court dated 23.09.2022 passed in C.W.J.C. No. 2783 of 2021 as well as judgment and order dated 09.11.2022 passed in C.W.J.C. No. 10900 of 2022.

12. This Court also finds that where the order(s) of the Court have been implemented in case of certain litigants, it should be implemented in respect of all other identically situated persons. It would be apt and proper to quote relevant paragraph of the judgment rendered by learned Full Bench of this Court in the case of **Amresh Kuamr Vs. The State of Bihar & Ors. [2018 (2) PLJR 929]**.

8. “. . . .The Bihar State
Litigation Policy, 2011, as indicated
hereinabove, mandates that all similarly



situated employees should be granted the benefit of covered matters and if orders of the Court have been implemented in case of certain litigants, it should be implemented in respect of all other identically situated persons. If the State Litigation Policy is to be implemented, we have no hesitation in holding that the present respondents should also be dealt with in identical fashion i.e. respondent Surendra Prasad Mahto @ Surendra Pd. Mahto in L.P.A. No.1509 of 2009 and the appellant Amarish Kumar Singh in L.P.A. No.1028 of 2007 in identical situation and once on 21.4.2011 a Division Bench of this Court in all other cases has granted benefit to the employees, there is no reason to go into the legal questions involved in the matter and answer them when we find that in the cases of twenty-eight employees the benefit has been granted to them by virtue of the orders passed by this Court.”

13. Accordingly, the impugned order as contained in Annexure-8 series and 9 series, to the extent whereby the alleged excess payment has been recovered/deducted are hereby set aside and the respondents are directed to refund the respective recovered amount/deducted amount to the petitioners preferably within a period of twelve weeks from the date of date of receipt/production of a copy of this order. However, the



respondents shall be at liberty to get their pension revised, in
accordance with law.

14. The writ petition stands allowed to the extent
indicated hereinabove.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.01.2024
Transmission Date	NA

