

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15708 of 2011

1. NIRAJ KUMAR CHAUBEY S/O Late Naresh Mohan Chaubey R/O Village - Dariyapur, P.S.- Sahkund, District - Bhagalpur, At Present Posted In The Office Of The Regional Deputy Director Of Education, Saran At Chhapra
2. Radheshyam Pathak S/O Late Harishwar Pathak R/O Village- Jhagrakhad, P.S.- Bhawanathpur, District - Garhwa Jharkhand, Presently Posted In Office Of District Education Officer, Siwan, P.S. and District - Siwan
3. Shankar Prasad Yadav S/O Late Sukadeo Rai R/O Mohalla- Nai Bazar, Hospital Road, P.S.- Bhagwan Bazar, Chhapra Saran, Presently Posted In Office Of District Education Officer, Siwan, P.S. and District - Siwan
4. Akhil Rai S/O Late Khaderan Ram R/O Village - Chauri, P.S.- Sahar, District - Bhojpur, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
5. Sanjeev Kumar Pandey S/O late Ramashan Pandey R/O Village- Akhtiyarpur, P.O. And P.S.- Garkha, District - Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District- Siwan
6. Shashi Nath Jha S/O Ganesh Jha R/O Village- Gaopur, P.O.- Bhagwatpur, P.S.- Sarai Ranjan, District- Samastipur, At Present Posted in The Office Of District Education Officer, Siwan, P.S. And District - Siwan
7. Md. Humayu Akhtar At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
8. Poonam Kumari W/O Amrendra Kishore Singh R/O Village- Sihauta Bangara, P.S.- Maharaj Ganj, District - Siwan, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
- 9.1. Gita Devi, Wife of Late Ambuj Narayan Choubey, Resident of Village- Dariyapur, P.S.- Sahkund, District- Bhagalpur at present residing at Rimmi Enclave Flat no. 303, CDA Colony, Kesharinagar, PS-Shastrinagar, District- Patna.
10. Nilam Paswan, Wife of Late Ashok Kumar Prasad, Resident of Village- Sarseyan, PO- Saghar Sultanpur, P.S- Bhagwanpur, District- Siwan at present residing at 350- Mahadeva, P.O and PS and District- Siwan.
11. Arbind Kumar Pandey At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
12. Arun Kumar Sinha S/O Late Krishna Kumar Sinha R/O Village- Jitan Niwas, R/O Bhagwan Bazar, P.S.- Bhagwan Bazar, Chhapra, District - Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
13. Rajeshwar Rai S/O Late Ramjas Rai R/O Village-Makinpur, P.O. And P.S.- Garkha, District - Chhapra, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
14. Shailesh Prasad Yadav S/O Late Rajbanshi Prasad R/O Village- Manpur Manjhan, P.S.- Dori Ganj, District- Chhapra, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
15. Nagendra Rai S/O Late Punykal Rai R/O Village- Purbi Rauza, P.O. And



- P.S.- Chhapra Town, District - Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
16. Rajendra Prasad S/O Sri Ratan Lal R/O Village- Patar, P.S.- Raghunathpur Via Khujhawan, District - Siwan, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District- Siwan
 17. Virendra Prasad Singh S/O Late Ram Ayodhya Prasad Singh R/O Village- Abadi, P.S.- Marhaura, District- Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
 18. Himanshu Kumar Singh S/O Late Ram Janam Singh R/O Village- Mahmudpur Patti, P.S.- Gautam Budha Nagar Tarwara, District- Siwan, Presently Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
 19. Amerika Rawat S/O Sri Ram Bachan Yadav R/O Village-Jagatpur Tarwara, P.O.- Telpa, P.S.- Janta Bazar, District- Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District- Siwan
 20. Surendra Singh S/O Late Babu Lal Singh R/O Village- Chandapur, P.O.- Chephul, P.S.- Daupur, District- Saran, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan
 21. Sachidanand Singh S/O Sri Bir Bahadur Singh R/O Village- Nawada, P.O.- Maker, District- Chhapra, At Present Posted Inthe Office Of District Education Officer, Siwan, P.S. And District- Siwan
 22. Bhuneshwar Prasad S/O Ram Lakhan Singh R/O Village-Molna Bigha, P.O.- Onda, P.S.- Sare, District- Nalanda, At Present Posted In The Office Of District Education Officer, Siwan, P.S. And District - Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, HRD Department, Government of Bihar, Patna
4. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
5. The Principal Secretary, General Administration Department, Government of Bihar, Patna
6. Director (Secondary Education), HRD Department, Govt. of Bihar, Patna
7. Director (Primary Education), H.R.D. Department, Govt. of Bihar, Patna
8. The Commissioner, Saran Division, Chhapra
9. The Regional Deputy Director of Education, Saran at Chhapra
10. The District Education Officer, Siwan
11. The District Superintendent of Education, Siwan
12. The Principal Secretary, Finance Department, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr.Bajarangi Lal, Advocate.
For the State : Mr. Manoj Kumar Sinha, AC to SC-19.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-05-2024

Heard Mr. Bajarangi Lal, learned counsel appearing
on behalf of the petitioner and Mr. Manoj Kumar Sinha, learned
AC to SC-19 for the State.

2. The petitioner has filed the present writ petition
for the reliefs as prayed for in Para-1 of the writ petition, which
are, inter alia, reproduced hereinafter:

“a. For quashing of letter no. 4933 dated 23.12.10 issued by Director, Secondary Education, Govt. of Bihar, Patna where under and whereby clerks posted in regional offices of Education Department have been held not entitled for grant of 1st and 2nd Assured Career Progression [A.C.P.] benefits in the pay scale of Rs.5000- 8000 and Rs. 5500-9000 taking into promotional channels provided in "The Education-Creation of Ministerial Service Cadre Recruitment, Promotion and Transfer Rules, 1974" (hereinafter referred as "Service Rules 1974").

b. For quashing of order contained in memo no.222 (legal) dated 16.03.2011 passed by Principal Secretary, HRD department, Government of Bihar Patna by which it has been observed that since post of superintendent is not sanctioned in the in Muffasil establishment of Education department and therefore the ministerial staffs are not entitled for grant of pay scale of Rs.5000-8000 and scale of Rs.5500-9000 as 1st and 2nd ACP to them.

c. for quashing of order issued by Joint Secretary, Department of finance, Government of Bihar contained in letter no.3502 dated 21.04.2011 and consequential order contained in letter no.1254 dated 16.06.11 issued by the Director, Secondary Education, Bihar where under and whereby it has been held that since there is no post of superintendent in Muffasil establishment of Education department and so 1st ACP scale of Rs.4500-7000/- and 2nd ACP scale of Rs.5000-8000 is admissible to clerical staffs of education department and scale of Rs.5000-8000 and scale of Rs.5500- 9000 is not admissible as 1st and 2nd ACP to them.

d. For issuance of appropriate direction commanding respondents to treat ministerial staffs of



Education Department posted in Regional and Subordinate Offices at par with ministerial staffs of Collectorate and other Muffasil offices and grant them ACP benefits similar to ministerial staffs of Collectorate & Muffasil Offices.

e. For a direction to the respondents restraining them from making any recovery from petitioners on account of excess payments granted on account of ACP benefits granted to them by RDDE, Saran in pay scale of Rs. 5000-8000 and scale of Rs. 5500-9000 wherein any misrepresentation or fraud has not been committed by them.

f. For any other / orders to which the petitioner is entitled in the facts and circumstances.”

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners are aggrieved with the recovery made from the individual petitioner, as a consequence of the orders contained in Annexures-11, 12, 13, 14, as well as, Annexure-17 which has been brought on record by way of filing interlocutory application challenging the orders passed by the Regional Deputy Director of Education, Saran Division.

4. Considering the aforesaid submission made on behalf of the petitioners, no order is required to be passed so far as relief made in sub para (e) of Para-1 of the writ petition is concerned. As learned counsel appearing on behalf of the petitioners has restricted his prayer only with respect to the information contained in Annexures-11, 12, 13, 14, as well as, Annexure-17 annexed with interlocutory application, which are inconsistent with the law laid down by the Apex Court in the case of **Amresh Kumar Singh & Ors. Vs. State of Bihar & Ors. reported in 2023 SCC OnLine SC 496**, in which it has



been clarified in Paragraph Nos. 15, 16 and 17 by the Apex Court that financial upgradation cannot be equated with the promotion. In this background, learned counsel submitted that as a consequence of the orders contained in Annexure-11, 12, 13, 14, as well as, Annexure-17, if the petitioners have suffered with any recovery order, then in that case, he wants to file individual representation before the Regional Deputy Director of Education, Saran Division along with a copy of this order.

5. Considering the aforesaid submission made on behalf of the parties, and pleadings made in the writ petition and counter affidavit, I find that the petitioners have restricted their relief for disposal of their individual representation in light of the law laid down by the Apex Court in **Amresh Kumar Singh (Supra)**.

6. Annexures- 11, 12, 13, 14, as well as, Annexure- 17 annexed with the interlocutory application are hereby set aside and quashed.

7. The Regional Deputy Director of Education, Saran Division is directed to provide opportunity of hearing to the respective parties, particularly after hearing the petitioners, he is required to pass a reasoned order taking into account the law laid down by the Apex Court in the case of Amresh Kumar



Singh (supra) and if it is found that no recovery has been made from any of the petitioners, then in that case, they must not proceed to recover in furtherance of the orders contained in Annexures 11, 12, 13, 14, 17 and in light of the law laid down by the Apex Court in case of *State of Punjab & Ors. Vrs. Rafiq Masih (White Washer) & Ors.* reported in (2015) 4 SCC 334 and *Thomas Daniel Vrs. State of Kerala & Ors.* reported in 2022 LiveLaw (SC) 438.

8. As I have already allowed the writ petition to the above effect, the interlocutory applications which are pending are also disposed of and the interim relief granted to the petitioners is also merged with the same.

9. The writ application, accordingly, stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	08.05.2024
Transmission Date	N.A.

