

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10378 of 2015

1. Rajdeo Prasad and Ors son of Late Ram Swarup Yadav, R/O Village- Tadapar, P.O.- Tungi, P.S.- Deepnagar, District- Nalanda
2. Ranjeet Kumar, Son of Late Parmeshwar Prasad, R/o- Village- Darava Bigha, P.O.- Ekangradih, P.S.- Ekangarsarai, District- Nalanda
3. Ajay Kumar Sinha, Son of Late Bhagwat Prasad, R/o- Village- Dattu Bigha, P.O.- Ope, P.S.- Aungari, District- Nalanda
4. Jayram Chakravarti, son of Ram Swarup Prasad, R/O- Village P.O.- Diyawan, Karaiparsurai, District- Nalanda
5. Sanjay Kumar, Son of Late Jagdish Prasad, R/O- Vill- Pachasa, P.O.- Bhaura Talab, P.S.- Rahui, District- Nalanda
6. Prabind Kumar Ratnakar, Son of Late Ram Chandra Prasad, R/O- Village- Kurmi Bigha, P.O.- Vabhanvari, P.S.- Hilsa, District- Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Joint Secretary, Education Department, Govt. of Bihar, Patna
4. The Director, Primary Education Department, Govt. of Bihar, Patna null null
5. The District Magistrate, Nalanda at Biharsharif
6. The Regional Deputy Director of Education , Patna Division, Patna.
7. The District Education Officer, Nalanda Biharshariff
8. The District Programme Officer, Nalanda at Biharsharif
9. The District Programme Officer Establishment, Nalanda Biharshariff

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rama Kant Singh, Advocate
For the Respondent/s : Mr.Ajay Kumar, AC to GP4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-03-2024

In the instant writ petition, petitioners have prayed for
the following relief(s):-



“For issuance of an appropriate writ(s), order(s), for quashing of clause (ii) of the resolution of the Education Department, Gov. of Bihar contained in memo no. 7/वे0-14/2007-12 dated 05/01/2015 issued under signature of the joint secretary, Education Department Gov. of Bihar, (Respondent no.3) so far as it relates to petitioners whereby and whereunder Matric trained scale has been given w.e.f, 01.10.2013 to the higher degree holder untrained teachers who were appointed under Bihar elementary Schools teacher Appointment rules 1991 (hereinafter referred to as 'the Rules') after 05.09.1997 and passed teacher training examination 2004 in first attempt. And further for a direction to the Respondents to give Matric trained scale to the petitioners notionally from 05.09.1999 to 30.09.2003 and actually from 01/10/2003 as has been given under clause (i) of the memo dated 05.01.2015 no. 7/वे0-14/2007-12 those higher degree holder untrained teachers who were appointed under the Rules' prior to 05.09.1997 and have passed teacher training examination 2004 in first attempt. And further for a direction to the Respondents to extend the cut of date of appointment upto December 1997 and consequentially give the benefit of clause (i) of the impugned resolution to the petitioners as well.”

2. Brief facts of the case are that, petitioners were stated to have been appointed as untrained teachers during the period from 1997 to 1990 on various dates. On certain policy decision of the State Government read with certain judicial pronouncement. State was required to provide certain training to untrained teachers so as to have the status of trained teachers read with service particulars attached to the post of trained teachers. This was



subject matter of litigation in the case of **Ram Vijay Kumar & Ors. vs. State of Bihar & Ors.** decided on 05.09.1997, reported in **(1998) 9 SCC 227**. It is relevant to re-produce Para 5, Para 5 reads as under:-

“5. From the affidavit of Shri Deepak Kumar it appears that although appointment of Assistant Teachers on the basis of the impugned selection was made in August 1994 no steps have been taken so far by the State Government for imparting training to the untrained teachers. All that has been said in the affidavit of Shri Deepak Kumar is that the training period of two years is being reduced to one year and the syllabus for the one-year course is yet to be prepared. This lackadaisical approach in the matter of imparting training to persons who are required to teach students is indefensible. It is, therefore, directed that the State Government shall take immediate steps to finalise the syllabus and that the training course for training of the untrained teachers should commence from 1-10-1997. It must be ensured that all the untrained teachers who have been appointed as per the aforementioned selection are duly trained within two years’ time.”

3. It is learnt that orders of the Hon’ble Supreme Court cited (supra) has not been timely complied. It is complied only in the year 2000. Similarly, petitioners were also provided an opportunity of having the benefit of undergoing training to have the status of trained teachers in the year 2000. However, results were stated to have been announced only in the year 2005. In this backdrop, question for consideration is whether petitioners are



entitled to have the benefit of trained teachers skill only on par with similarly situated persons who have undergone training in the year 2000. The State have extended trained teachers scale on notional basis to such of those persons who are party to early litigation and they have been extended notional fixation of trained teachers pay-scale from 05.09.1999, and the same has been denied to the petitioners. While denying such benefit from 05.09.1999, State have issued order on 05.01.2015. One of the clause read as under:-

“बिहार प्रारंभिक विद्यालय नियुक्ति नियमावली 1991 के अन्तर्गत दिनांक 05.09.1997 के उपरान्त नियुक्त उच्च योग्यताधारी अप्रशिक्षित (अनुकम्पा सहित) शिक्षक जिन्होंने शिक्षक प्रशिक्षण परीक्षा 2004 में सम्मिलित होकर प्रथम प्रयास में उत्तीर्ण हुए, उन्हें भी दिनांक 01.10.2003 से मैट्रिक प्रशिक्षित वेतनमान दिया जाय।”

4. By virtue of this clause, the petitioners have been blocked in claiming trained teachers scale with effect from 05.09.1999. Hence, the petitioners have questioned the validity of clause (ii) and further sought for a direction to extend trained teachers scale from 05.09.1999 to 30.09.2003, since trained teachers scale has been extended to petitioners with effect from 01.10.2003.



5. Learned counsel for the petitioners submitted that it is beyond their control to have the benefit of training as a trained teacher unless and until State Government undertake or provide training for the purpose of gaining trained teachers status. In fact Hon'ble Supreme Court has specifically directed the State-respondents to undertake training commencing from 01.10.1997. The same has not been adhered on the other hand training was conducted in the year 2000. Similarly, petitioners have also undergone training in the year 2000 and results were announced only in the year 2005. At every stage, there is a delay on the part of the State to the extent in not providing training to such of those untrained teachers timely and so also results were announced after lapse of 5 years for no fault of the petitioners denial of trained teachers on with similarly situated persons who are appointed prior to petitioners and who have undergone training in the year 2000 and they have been extended trained teachers scale with effect from 05.09.1999 on notional basis. Therefore, petitioners are also entitled to trained teachers pay-scale with effect from 05.09.1999 on notional basis. It is also submitted that at the best petitioners would enure to their benefits increment during the period from 05.09.1999 till pay fixation with effect from 01.10.2003. Further, third party right is not affected if it is granted.



6. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that having regard to the date of appointment of the petitioners read with the date of appointment in respect of **Ram Vijay Kumar & Ors. vs. State of Bihar & Ors.** reported in (1998) 9 SCC 227 The petitioners form separate class of persons and they have not approached judicial forum in seeking similar benefit on par with **Ram Vijay Kumar & Ors. vs. State of Bihar & Ors.** at relevant point of time. Therefore, there is no infirmity in the order dated 05.01.2015 so as to interfere with the same.

7. Heard learned counsels for the respective parties.

8. State Government being a model employer, it should have timely provided training to such of those untrained teachers with reference to policy decision of State Government to provide training initially for a period of two years and thereafter it was reduced to one year.

9. Despite Hon'ble Supreme Court decision in the case of **Ram Vijay Kumar & Ors. vs. State of Bihar & Ors.** The State-respondents have not implemented the decision of the Hon'ble Supreme Court timely. In other words, they have taken three years time to provide training. That apart they have announced the results only in the year 2005. Taking note of dates



and events, it is evident that at every stage there is a delay on the part of the State Government. Therefore, impugned clause (ii) of order dated 05.01.2015 is discriminatory and arbitrary. The petitioners have made out a case so as to interfere with that the aforementioned clause, accordingly, it is set aside.

10. The concerned respondent is hereby directed to fix notional pay in the trained teachers scale to the petitioners with effect from 05.09.1999 and re-fix pay during the intervening period from 05.09.1999 to 30.09.2003. The delay would not be a hurdle insofar as notional fixation of pay. It is to be noted that third party right is not effected in the event of granting notional fixation of trained teachers pay-scale to the petitioners. It is relevant to take note of Hon'ble Supreme Court decision on the issue of delay in respect of fixation of pay of an employee, namely, **M.R.Gupta vs. Union of India** reported in (1995) 5 SCC 628.

11. However, if petitioners are entitled to any difference of pay from the date of fixation of trained teachers pay-scale to the petitioners with effect from 01.10.2003 and they had a cause of action earlier to 2015. In such circumstances, the petitioners are not entitled to any arrears of pay three years prior to presentation of the present petition, i.e., July, 2015. In other words, if any, arrears were required to be disbursed in favour of the petitioners



that could be extended only from 2012 onwards. The petitioners are not entitled to any arrears prior to July, 2012. This principle has been laid down by the Hon’ble Supreme Court in the cited decision.

12. Accordingly, the concerned respondent is hereby directed to re-fix pay of the petitioners on notional basis with effect from 05.09.1999 in the trained teachers pay-scale and extend consequential benefits in the light of observation made (supra). Hence, the present writ petition stand allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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