

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5159 of 2021

=====

Gauri Shankar Singh Son of Late Gariba Singh Resident of Village-
Bhikhaband Biriti Tola, P.O.- Takkipur, P.S.- Daraunda, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Siwan, District- Siwan.
4. The Regional Deputy Director, Saran at Chapra.
5. The District Education Officer, Siwan, District- Siwan.
6. The District Programme Officer, Establishment (Education), Siwan, District-
Siwan.
7. The District Superintendent of Education, Siwan, District- Siwan.
8. The Treasury Officer, Siwan, District- Siwan.
9. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Chandra Shekhar Singh, Advocate Mr. Ranjeet Choubey, Advocate Mr. Kumar Gaurav Singh, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Mishra, (SC16)
For the AG	:	Mr. Chaitanya Swaroop, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 17-04-2025 Heard Mr. Chandra Shekhar Singh, along with Mr.

Ranjeet Choubey and Mr. Kumar Gaurav Singh, learned
counsels appearing on behalf of the petitioner; Mr. Subhash
Chandra Mishra, learned SC16 for the State and Mr. Chaitanya
Swaroop, learned counsel appearing on behalf of the
Accountant General, Bihar.

2. The petitioner in paragraph no. 1 of the present writ



petition has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

“I. For issuance of an appropriate writ in the nature of CERTIORARI quashing or setting aside the order contained in Memo No. 2345 dated 06.08.2015 passed by the District Programme Officer, Siwan has cancelled the benefits of ACP to the Petitioner.

II. For issuance of an appropriate writ in the nature of CERTIORARI quashing or setting aside the order contained in Memo No. 833 dated 22.07.2016 rejected the representation of the Petitioner by the Director, Primary Education, Government of Bihar (Respondent No. 2).

III. For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities to consider and allow the representation dated 02.03.2020 of the Petitioner in the light of order dated 17.10.2019 passed in CWJC No. 6725 of 2018 by Hon'ble Mr. Justice Mohit Kumar Shah.

IV. For grant of any other relief or reliefs for which the Petitioner deemed entitled into the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of petitioner at the outset submitted that the reliefs as prayed for in the present writ petition are similar to the reliefs, which were prayed for in CWJC No.6725 of 2018 (***Birender Kumar Singh vs. State of Bihar and Ors.***). The petitioner of the said writ



petition was also aggrieved by the order dated 06.08.2015, passed by the District Programmer Officer, which was affirmed by the Director, Primary Education, Bihar vide Memo No.833 dated 22.07.2016. In the present writ petition, the petitioner is also aggrieved by the said order passed by the Director.

4. I have perused the order dated 17.10.2019 passed in CWJC No.6725 of 2018. I find it apt to reproduce para-8 and 9 of the same hereinafter;

“8. The petitioner had then approached the Director Primary Education, Government of Bihar, Patna by filing appropriate representation, however, the representation of the petitioner has been rejected by an order contained in memo no. 833 dated 22.7.2016 on the following grounds:-

(i) According to the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993, there was provision to grant time bound promotion to the untrained teachers like other employees of the State Government and since the Physical Education Teachers fell under the untrained teachers category, they were entitled to grant of time bound promotion till the 4th pay revision recommendations remained effective i.e. till 31.12.1995, however, upon coming into force of the Bihar State Employees Service Condition (Assured Financial Progression Scheme) Rules, 2003 (hereinafter referred to as the ‘Rules 2003’) with effect from 9.8.1999, the teachers of the nationalized school stood not covered by the said Rules. Similarly, the teachers of the nationalized school, who are not covered by the Assured Financial Progression Scheme, 2010 which has come into force on account of the resolution of the Finance Department dated 14.7.2010, in terms of the recommendations of the 6th Pay Revision Commission recommendations.



(ii) According to Clause 16 of the Bihar Nationalized Elementary School Teachers Promotion Rules, 2011, by which the Rules, 1993 were cancelled, also provides that untrained teachers shall not be entitled to promotion to any grade.

(iii) Untrained teachers would be entitled to grade III (original pay scale of matric / inter trained, pay band II, grade pay 4200/- from the date, they have been given trained pay-scale.

(iv) It is thus clear that after 1.1.1996, Physical Education Teachers under the untrained teacher category are not covered by any scheme pertaining to financial progression or promotion. Hence, the Director Primary Education, Education Department, Government of Bihar, Patna vide order dated 27.7.2016 held that the time bound promotion / ACP, granted to the petitioner, has been rightly cancelled and such action of the District Programme Officer (Establishment), Siwan is according to the Rules, as such, the claim of the petitioner was rejected.

9. The petitioner had then filed an appeal on 21.9.2017 before the Principal Secretary, Department of Education, Government of Bihar, Patna, however, the same was sent to the Secretary, Department of Education, Government of Bihar, Patna for adjudication which was then rejected by an order dated 16.2.2018.”

5. The petitioner had filed an appeal against the order dated 22.07.2016 before the Principal Secretary, Education Department, which was rejected vide Memo No.168 dated 16.02.2018 by the Secretary, Education Department. The petitioner has also challenged the order dated 22.07.2016, which has been brought on record by way of Annexure -11 to the writ petition. An objection has been raised in para – 14 of the counter



affidavit that for the petitioner more efficacious remedy of appeal is there but the petitioner, without availing the said remedy, has filed the present writ petition. I find that the whole purpose of granting benefits of ACP and MACP is in the background of the fact that the employees, who don't have any avenue of promotion or their promotion has not been taken for a long period of time and they become entitled for financial progression, should not get frustrated. In CWJC No.6725 of 2018 in the case of ***Birender Kumar Singh (Supra)*** taking into consideration provision under Rule 32(2) of the Rules, 1993, this Court had gone into the question, whether the physical education teachers, who are under untrained category, are entitled for time bound promotion or not according to several orders and decisions of the Government taken time to time. In the case of ***Birender Kumar Singh (Supra)*** this Court, after taking into consideration of the law laid down by the Apex Court in case of ***State of Tripura & Others vs. K.K.Roy*** reported in ***(2004) 9 SCC 65***, has finally quashed the order passed by the District Programmer Officer, Siwan dated 22.07.2016 and the Director, Primary Education, Bihar dated 16.02.2018. The case of the petitioner is squarely covered in light of observation and direction made in the case of ***Birender Kumar Singh (Supra)***



and as such, the impugned orders contained in Memo no.2345 dated 06.08.2015 and Memo no.833 dated 22.07.2016 are hereby set-aside and quashed. As a consequence of which, the respondents are directed to make payment of recovered amount, if any, without any delay and fix the pension of the petitioner and give all the terminal benefits, payable to the petitioner, in accordance with the law, after granting benefit of ACP and MACP.

6. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

U			
---	--	--	--

