

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.376 of 2024

In
Civil Writ Jurisdiction Case No.3717 of 2019

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Payal Singh, W/o Sri Amit Denis, resident of Christian Quarters Bettiah, P.S.
Bettiah Town, District West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. Director (Secondary Education), Human Resources Development
Department, Government of Bihar, Patna.
3. District Programme Officer, District Education Office, West Champaran
District, Bettiah.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Cebin Mathew, Advocate Mr. K.M.Joseph, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13 Mr. Tej Pratap Singh, Advocate Mr. Ravi Kumar, Advocate Mr. Abhinav Alok, Advocate Mr. Arya Achint, Advocate Mr. Anjanya Singh, Advocate Ms. Sunita Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 05-08-2025

The present intra-court appeal is directed against
the order dated 14.03.2024 passed by a learned Single
Judge in CWJC No. 3717 of 2019, whereby the said writ
petition filed by the appellant-writ petitioner was dismissed.



2. As per the facts on record, the appellant's case is that on 14.03.1970, St. Teresa's Girls High School, Bettiah, got recognised as a minority institution by the State Government. The appellant applied for appointment as an Assistant Teacher in response to an advertisement dated 14.01.2012. The appellant was appointed against an existing vacancy on a sanctioned post and, accordingly, joined on 02.04.2012.

3. On 18.09.2012, the appellant's appointment was forwarded to the Director of Secondary Education, Bihar by the Secretary of the School for approval under Section 18(3)(b) of the Bihar Non-Government Secondary School (Taking Over of Management and Control) Act 1981. On 10.09.2014, the Director, Secondary Education, vide Memo No. 786, gave approval to the appointment of the appellant with effect from her date of joining. The said memo further mentioned that, in terms of Departmental Resolution No. 921 dated 08.08.2013, the Assistant Teachers appointed in minority schools after 27.05.2011 would be paid a fixed salary equivalent to the salary paid to teachers appointed



under the 2006 Rules. It was also directed that the Competent Authority should verify the documents of the appellant before payment of her salary. The appellant's certificates were verified by the District Programme Officer (Establishment), West Champaran, and the salary of the appellant was fixed on the basis of Notification No. 1530 dated 11.08.2015, vide order dated 30.04.2016 (Annexure 9 to writ petition).

3. The learned Single Judge, after considering the rival contentions of the parties and facts of the case, dismissed the writ petition holding that the matter of salary fixation falls within the domain of the State Government's policy, and the Court cannot interfere with such a policy decision.

4. Learned counsel for the appellant has challenged the impugned judgment and order dated 14.03.2024 passed by the learned Single Judge in CWJC No. 3717 of 2019. It is further submitted that the order passed by the learned Single Judge is arbitrary and against the binding judicial precedents. It is further submitted that



the amendment made to the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 by the Bihar Non-Government Secondary Schools (Taking Over of Management and Control))(Amendment) Act, 2011 is silent on the issue of applicable pay scales. The primary objective of the aforementioned amendment was to ensure that the competent authority approves the appointment of Assistant Teachers by the Managing Committee only after verifying that an appointee in question possesses the minimum qualifications as outlined by the NCTE, which are uniformly applied to teachers employed in government, government-aided, and minority secondary schools.

5. It is further submitted by the learned counsel for the appellant that the learned Single Judge has failed to consider that the appellant, who was appointed and joined the service against the sanctioned post on 02.04.2012, is entitled to a salary at the current rate of pay applicable to the post. This salary is due within seven days of the end of the month (30.04.2012) and cannot be reduced by a



resolution issued by the State Government in 2013. The learned counsel further submitted that the learned Single Judge failed to take note that the Hon'ble Supreme Court, in the case of **State of Bihar v. Bihar Secondary School Teachers Struggle Committee, Munger & Ors., (2019) 18 SCC 301**, has dismissed the petition filed by a *Niyojit* teacher seeking pay parity with teachers appointed and working against sanctioned posts, upholding the State Government's stand that Assistant Teachers appointed against sanctioned posts and continuing to serve in government schools, and government-taken secondary schools, form a separate class entitled to different pay scales applicable to them.

6. Additionally, the learned counsel submitted that the State Government extended the benefit of the Sixth Pay Commission to employees of minority schools through Education Department Resolution No. 787 dated 03.09.2010 (Annexure-13 to supplementary affidavit on behalf of petitioner). The learned counsel further submitted that the State Legislature enacted the Bihar Act 5 of 2011,



which amended sub-section (3) of Section 18 of the Bihar Non- Government Secondary Schools (Taking Over of Management & Control) Act 1981. The amended provision reads as follow:-

“3. Amendment of section-18 of Bihar Act 33,1982.-

“(b)-

(i) xx xx

(ii) The Managing Committee of the minority secondary school may appoint teachers against posts sanctioned by the state Govt. as per eligibility and criteria, prescribed under the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules 2006 (as amended from time to time) and The Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules 2006 (as amended from time to time) after obtaining approval of Director, Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director, Secondary Education.”

7. According to the learned counsel for the appellant, the Department of Education, Government of Bihar has completely misunderstood the amended provision of Bihar Act 5 of 2011 and, on that basis, issued Notification No. 921 dated 08.08.2013 (Annexure 15 to the writ petition), which mandates that those who appointed in minority schools in response to a vacancy on a sanctioned post after May 27, 2011, shall receive a pay scale



equivalent to that which the State has approved for *Niyojit* teachers appointed in government taken over schools, which reads as follows:-

बिहार अराजकीय माध्यमिक विद्यालय (प्रबंध एवं नियंत्रण ग्रहण) अधिनियम, 1981 यथासंशोधित, 2011 की धारा-3 (ख) में किये गये प्रावधानानुसार अराजकीय अल्पसंख्यक माध्यमिक विद्यालयों की प्रबंध समिति विद्यालय के लिये राज्य सरकार द्वारा मंजूर किये गये पदों के विरुद्ध बिहार नगर निकाय माध्यमिक एवं उच्चतर माध्यमिक शिक्षक नियोजन नियमावली, 2006 (समय-समय पर यथासंशोधित) एवं बिहार जिला परिषद माध्यमिक एवं उच्चतर माध्यमिक शिक्षक नियोजन नियमावली. 2006 (समय-समय पर यथासंशोधित) के द्वारा विहित पात्रता एवं अर्हता के अनुसार शिक्षकों की नियुक्ति करेगी, जिसका अनुमोदन जिला शिक्षा पदाधिकारी के माध्यम से निदेशक, माध्यमिक शिक्षा द्वारा किया जायेगा। विभागीय संकल्प संख्या 921 दिनांक 08.08.2013 द्वारा दिनांक 27.05.2011, के पश्चात अल्पसंख्यक माध्यमिक विद्यालयों में नियोजित होने वाले शिक्षकों को राजकीयकृत माध्यमिक / उच्च माध्यमिक विद्यालयों में शिक्षक नियोजन नियमावली, 2006 के अनुसार नियोजित होने वाले शिक्षकों की भांति राज्य सरकार द्वारा अनुमान्य नियत वेतन के समतुल्य नियत वेतन मात्र सहायक अनुदान के रूप में दी जाएगी।

8. On the other hand, while defending the order of the learned Single Judge, the learned counsel for the respondents submitted that the appointment of the appellant



was approved by the Director of Secondary Education through Memorandum No. 768 dated 10.09.2014, with a stipulation that she would receive a pay scale at par with that of teachers appointed under the Teacher Appointment Rules, 2006. The State Government took a policy decision, after the enactment of the Teacher Appointment Rules, 2006, to recruit teachers on fixed emoluments, and consequently the recruitment of teachers in Government Nationalised Schools is being carried out on the basis of a fixed salary. Additionally, the learned counsel for the respondents submitted that the Education Department of the Government of Bihar issued Government Resolution No. 921 dated 08.08.2013, which provided for the payment of fixed salary to teachers in minority schools, maintaining parity of pay scale in all educational institutions.

9. We have heard the learned counsel for the parties and have also gone through the impugned order passed by the learned Single Judge. The only question that arises for consideration by this Court is whether the order passed by the learned Single Judge requires any



interference.

10. We find no valid reason to interfere with the order passed by the learned Single Judge. Fixation of salary and grant of pay scale in service is a matter of policy to be decided by the employer, *i.e.*, the State Government, and this Court should not interfere in such policy decisions. We further take note of Annexure 8 to the writ petition, wherein the Director of Secondary Education explicitly mentioned the salary condition of the appellant while approving her appointment. It is also evident that the appellant agreed to the terms and conditions of the appointment and, accordingly, rendered her services without any grievance till 2019, the year in which she filed the writ petition.

11. It is a settled position of law that the terms and conditions of service are to be governed by either the advertisement or the appointment letter, subject to not being in contravention to any statutory rules or circulars having statutory force. Therefore, in the present case, the issue of entitlement of salary/pay scale is to be governed by approval of appointment made by the Director, Secondary



Education.

12. Accordingly, we do not find any merit in this appeal, and the same is dismissed.

13. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J)

Ramesh Chand Malviya, J: I agree.

(Ramesh Chand Malviya, J)

Sujit/-

AFR/NAFR	NAFR
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