

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 281 of 2018

Shakti Kumar Singh Petitioner

Versus

1. The State of Jharkhand through the Principal Secretary, School Education & Literacy Department, Govt. of Jharkhand.
2. The Director, Directorate of School Education & Literacy, Govt. of Jharkhand.
3. The Deputy Commissioner, Ranchi.
4. The District Superintendent of Education, Ranchi.

. Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Amit Kumar Tiwari, Adv.

For the Respondents: Mr. Manish Kumar, Sr. S.C.-II

CAV on:- 05/03/2024

Pronounced on:-23/04/2024

Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for quashing of the Office Order contained in Memo No. 1456 dated 06.05.2017 (Annexure 6/A), issued by the District Superintendent of Education, Ranchi (respondent No.4); whereby it is held that the petitioner being the intermediate untrained teacher will be given equal to Matric Trained scale and from 01.01.1996 again untrained scale will be given and further Graduate Trained scale will be given from the date of training.

The petitioner has assailed the aforesaid Office Order on the ground that the same is contrary to the judgment passed by this Court in case of *Arun Sinha and others Vs. The State of Jharkhand*, passed in W.P.(S) No. 638/2006, affirmed in L.P.A. No. 214/2008 and S.L.A. No. 5520-5522 of 2013.

The petitioner has further prayed for a direction upon the respondents to grant promotional monetary benefits and fixation of pay as given Grade 1 from the date of appointment and Grade 2, as per the judgment rendered in

the case of *Arun Sinha and ors.* (*supra*), with all consequential benefits.

3. The brief fact of the case is that on 5th March 1991 the Government of Bihar through HRD came up with a resolution dated 5th March, 1991, enunciating the policy for induction of the untrained teachers and provide them in-service training. Thereafter, based on the aforesaid Policy decision, an advertisement was issued by the BPSC for appointment of teachers in Govt. Primary Schools inviting application from the trained teachers as well as untrained teachers and the advertisement itself prescribes that the trained teachers would be given preference.

The petitioner participated in the selection process and after selection by BPSC, the appointment letter was issued. A Rule was also framed as Elementary Teachers Promotion Rule which provides for Grade-1 i.e. Matric Trained Scale.

4. The case of the petitioner is that the order passed by this Court in the case of *Arun Sinha (supra)* mandates that the teachers who have been provided in-service training after much delay due to fault on the part of the state, shall be granted Grade-1 i.e. Matric Trained Scale from the date of appointment. The same was confirmed in L.P.A. No. 214/2008 and also S.L.A No. 5520-5522 of 2013. Thereafter, the petitioner has been granted Grade-1 from the date of appointment and Grade-2 after 12 years of service by the order dated 11.04.2016. Even the other similarly situated persons were also granted the same benefit.

However, after the fixation in Grade 1 from the date of appointment, it has been sent for the approval of DSE and the DSE, Ranchi has cut down the fixation order and it fixed untrained scale at the time of appointment and it has been ordered in the impugned order that the petitioner shall be given Grade-1 on the date when he attains training.

5. Learned Counsel for the petitioner submits that the impugned order (Annexure- 6 and 6/A) is contrary to the

order passed by this Court. He further submits that in compliance of the judgment of *Arun Sinha (supra)*, the entire state of Jharkhand has extended the benefit of Grade-1 from the date of appointment and the monetary benefits of the same.

He further submits that under similar circumstances, some of the districts were taking similar view as in the impugned order and thus one such person approached this Court in W.P.(S) No. 7392/2017; **Nand Kishor Nayak vs. The State of Jharkhand** reported in **2018 SCC Online Jhar 2692**; wherein this Court has issued a direction to the Secretary, School Education and Literacy Department to grant fixation from the date of appointment and the actual monetary benefit from 15.11.2000 i.e. from the date of creation of the State of Jharkhand and accordingly the direction has been issued to the Secretary to pay the monetary benefits.

During course of arguments, Mr. Tiwari referred to a resolution dated 26.08.2021 taken on record. He further submits that pursuant to the said order, a resolution has been issued in compliance thereof vide Memo no. 619 dated 26.08.2021, wherein it was decided that the untrained assistant teacher will be given pay of Grade I and seniority from the date of appointment and further decided Grade II will be given pay after completion of 12 years of service provided that they have completed training within the said period.

6. He further submits that the stand taken by the respondent that the petitioner was only intermediate at the time of appointment and also referred the case of **Binay Kumar Rai and others vs. The State of Bihar** wherein the Patna High Court in CWJC No. 7103/1999 has categorically held that the teachers having higher qualification i.e. Intermediate, Graduate and Post Graduate shall be entitled for the trained scale from the date of appointment i.e. Grade-1, is on the different context.

He contended that the stand taken in the Counter Affidavit as well as the impugned order (Annexure-6 and 6/A) is wholly arbitrary, unjust and unsustainable in the eye of law and contrary to the Annexure-3 Series, and the judgment passed in *Nand Kishor Supra* case as well as the resolution passed vide memo no. 619 dated 26.08.2021.

7. Learned counsel for the respondents submits that after the state of Jharkhand came into existence on 15.11.2000, two writ petitions being C.W.J.C. No. 495/2000 (R) and 1409/2000 were filed before this High Court. This Court had directed to consider Fitment of the Appellate Committee and it was ordered vide memo no. 4568 (F) dated 05.07.2002 by the Finance Department that the Untrained Graduate degree holder who have been appointed against the pay scale of matric trained scale, will be given the pay scale of matric trained i.e. Rs 4500-7000 w.e.f. 01.01.1996 notionally but the monetary benefits shall be paid w.e.f. 15.11.2000 conditionally.

He further submits that since the petitioner's educational qualification is intermediate untrained, hence he does not come under the purview of the memo no. 4568 dated 05.07.2002. Therefore, he is not entitled for the benefits as sought for. He further submits that case of the petitioner is different from W.P.(S) no. 638/2006 *Arun sinha & others (Supra)* wherein petitioners were untrained graduates and they were getting the pay scale of matric trained in pursuant to the letter issued vide memo no. 4568 dated 05.07.2002 w.e.f. 01.01.1996 notionally and w.e.f. 15.11.2000 actually; whereas petitioner was not getting the pay scale of matric trained, w.e.f. 01.01.1996.

He further submits that in compliance to the order passed by this court in *Arun Sinha and ors. supra*, the secretary, the School Education and Literacy Department has issued direction to grant *inter se* seniority in Grade- I to the teachers who were appointed as untrained teachers against the post of matric trained scale vide memo no. 3027 dated

14.12.2015 and as per the policy decision of the State contained in the aforesaid resolution, the *inter se* seniority of the untrained teachers have been fixed in terms of the said resolution clause 15 (ii) and benefits of pay fixation have been fixed in terms of the said resolution clause 15 (vii) and as per clause 15 (ii) & (iii) it is clear that the *inter se* seniority of Untrained teachers in Grade-1, would be fixed on the basis of their respective date of appointment / initial joining and any promotion from Grade- I to the higher Grades thereafter would be dependent upon conditions prescribed in Bihar (Jharkhand) taken over Elementary School Promotion Rules, 1993, but as per clause 15 (vii) of the aforesaid resolution, benefits of Grade- I Scale i.e. matric trained scale shall be given in terms of memo no. 4568 (F) dated 05.07.2002 issued by the finance department.

8. Having heard learned counsel for the parties and after perusing the documents annexed with the respective affidavits and the judgment relied upon by both the parties, it appears that the stand taken by the respondent that the petitioner was an intermediate at the time of appointment and the same issue was dealt in the case of *Binay Kumar Rai and others (Supra)*; wherein the Patna High Court in CWJC No. 7103/1999 has held that the teachers having higher qualification i.e. Intermediate, Graduate and Post Graduate shall be entitled for the trained scale from the date of appointment i.e. Grade-1; is not acceptable in view of the judgment passed in the case of *Arun Sinha and ors. supra*.

So far as the resolution no. 3027 dated 14.12.2015, is concerned; the *inter se* seniority of the untrained teachers have been fixed in terms of the said resolution clause 15 (ii) and benefits of pay fixation have been fixed in terms of the said resolution clause 15 (vii) and as per clause 15 (ii) & (iii) of the said resolution, it is clear that seniority of Untrained teachers in Grade-1, would be fixed on the basis of their respective date of appointment / initial joining and any promotion from Grade-1 to the higher grades

thereafter would be dependent upon conditions prescribed in Bihar (Jharkhand) taken over Elementary School Promotion Rules, 1993, but as per clause 15 (vii) of the said resolution, benefits of Grade- 1 Scale i.e. matric trained scale shall be given in terms of memo no. 4568 (F) dated 05.07.2002 issued by finance department.

9. For present issue, the petitioner has relied upon the judgment of this court in *Nand Kishor Nayak (Supra)*; wherein for the same set of facts many aggrieved persons have approached this court, wherein this court passed order directing the Secretary, School Education and Literacy Department to grant fixation from the date of appointment and the actual monetary benefit from 15.11.2000 i.e. from the date of creation of the State of Jharkhand and a direction has been issued to the Secretary to pay the monetary benefits and this order may be circulated to all the district heads.

For better appreciation, Para Nos.5 to 7 of the aforesaid decision is quoted herein below:

“5. Be that as it may, having gone through the submissions of the parties and after perusing the relevant records, this Court is of the view that issue regarding giving benefits of Grade-I pay scale fell for consideration before this Hon'ble Court and the Hon'ble Court had observed that teachers are entitled for benefits from the date of their initial appointment and the same was affirmed upto the Hon'ble Apex Court and hence, the issue is no more res-integra. The State Govt. has also come-out with a resolution No. 3027 dated 14.12.2015 for implementing the same regarding grant of benefits from the date of initial appointment but unfortunately, the same is not implemented so far. The teachers are suffering as they are not getting their benefits though the issue has been set at rest by the Hon'ble Apex Court. Thereafter, several writ petitions have been filed for the same relief and several orders have been passed by the Hon'ble Court for granting the benefits of Grade-I from the date of initial appointment.

6. A very fair submission has been made by the learned Counsel that if the petitioners are not entitled for monetary benefits from the date of their initial appointment, they are at least entitled for notional benefits from the date of their initial appointment and monetary benefits from 15.11.2000, as contained in para-15(iv) of the resolution dated 14.12.2015 and also in view of settled principles of law. This submission of learned Counsel is appreciated by this Court.

7. As such, respondent No. 4 is directed to take a uniform decision in case of teachers for granting the benefits of Grade-I Scale keeping into account the decision of this Hon'ble Court in case of “Arun Sinha v. the State of Jharkhand, passed in W.P.(S) No. 638 of 2006 which was affirmed upto the Hon'ble Apex Court and in view of the fact

that State has already come-out with a resolution No. 3027 dated 14.12.2015. Needless to say that if the petitioners are granted promotion and thus entitled for monetary benefits also and accordingly are entitled for the benefits as prayed for, in view of decision of the Hon'ble Apex Court and in view of resolution dated 14.12.2015.”

10. Pursuant to the order passed in aforesaid case, a resolution has been issued by the state government in compliance thereof vide memo no. 619 dated 26.08.2021 wherein it was decided that the untrained assistant teacher will be given pay of Grade-I and seniority from the date of appointment and further decided Grade-II will be given after completion of 12 years of service provided that they have completed training within the said period.

11. In view of the aforesaid discussions and the judgments referred to herein above and also the subsequent resolution dated 26.08.2021; this application deserves to be allowed. Accordingly, the impugned order as contained in memo no. 1456 dated 06.05.2017 (Annexure – 6 A) is quashed and set aside and respondent no 4 is directed to pass an order in the light of the judgment rendered in *Nand Kishor Nayak (Supra)* and the resolution 26.08.2021.

12. It goes without saying that the respondents are directed to calculate the monetary benefits and pay the same within a period of four months from the date of receipt/production of a copy of this order.

13. As a result, the instant writ application stands allowed. Pending I.A.s, if any, also closed.

(Deepak Roshan, J.)

Fahim/-