

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.2923 of 2005

1. Sushil Kumar son of Late Yogendra Prasad Sah, resident of near Raj High School, P.O. & P.S. Pakur, District Pakur.
 2. Awadhesh Kumar Choudhary son of Late Sonamani Choudhary, resident of Ambedkar Para, P.O. & P.S. Pakur, District Pakur.
- **Petitioners**

Versus

1. The State of Jharkhand.
 2. The Secretary, Primary Education, State of Jharkhand, Ranchi.
 3. The Director, Primary Education, State of Jharkhand, Ranchi.
 4. The Regional Deputy Director of Education, Santhal Parganas, Dumka.
 5. The Deputy Commissioner, Pakur-cum-Chairman, District Education Establishment Committee, Pakur.
 6. The District Superintendent of Education, Pakur.
 7. The State of Bihar, through its Secretary, Primary Education, State of Bihar, Patna.
 8. The Director, Primary Education, State of Bihar, Patna.
- **Respondents**

CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioners	: Mr. Ajit Kumar, Sr. Advocate Miss Aprajita Bhardwaj, Advocate Mr. Din Dayal Saha, Advocate Mr. Ishank Ranjan, Advocate Ms. Tanya Singh, Advocate
For the Respondents	: Mr. Rohit, AC to AAG-I

Order No. 29/Dated 24th January, 2024

1. This writ petition is under Article 226 of the Constitution of India whereby and whereunder the direction has been sought for setting aside the office order as contained in Memo No.550/Pakur dated 12.05.2005 issued under the signature of the Respondent No.6, i.e., District Superintendent of Education, Pakur, whereunder

the B.Sc. Trained Scale granted to the petitioners vide office order dated 23.08.2004, has been cancelled.

2. The brief facts of the case as per the pleadings made in the writ petition which needs to be enumerated, read hereunder as :-

It is the case of the petitioners that both the petitioners are B.Sc. Trained Science Teachers posted in Middle School Dhanuspuja, Pakur and Middle School Murgadang Hiranpur, Pakur respectively and they were appointed as Science Teacher vide order dated 12.04.1983 and 18.04.1983 respectively they were granted scale of Rs.535/- of Matric untrained scale.

3. In the appointment letters of the petitioners it was clearly mentioned that on and from the date they passed the teachers training examination they will be given the scale of pay and further it is stated that their appointment was made in consonance of letter No.50 dated 20-02-1981.

4. It is the further case of the petitioner that in the aforementioned letter it has been clearly stated that the vacancy was only for two categories of posts namely I.Sc. Trained and B.Sc. Trained and the petitioners were appointed against the vacancies of B.Sc. Trained posts.

5. Though the petitioners were appointed in the year 1983 and were to be governed by the letter No.3629 dated

20.11.1982 (Annexure-3) yet they were being paid salary in terms of letter No.50 dated 20.02.1981.

6. In the meantime, in the year 1985 both the petitioners were terminated along with many others by the Government on the ground that their services were not required.

7. The petitioner No.1 had challenged the aforementioned decision of the Government before the Patna High Court in CWJC No.298/85 wherein the Patna High Court passed an interim order on 25.01.1985 and allowed the petitioner to work.

8. The petitioner No.2 had moved before the Hon'ble Supreme Court after exhausting his remedies before the Patna High Court in SLP(Civil) No.429 of 1988 which was ultimately allowed by the Hon'ble Apex Court with a direction that all the teachers shall have the credit of past services both in regard to payment of salary as also seniority and other service benefits.

9. Pursuant to the orders passed by the Hon'ble Supreme court the services of both the petitioners along with many others were reinstated and regularised.

10. It is the further case of the petitioners that both the petitioners, were given Matric Untrained Scale even when they were appointed as Science Teacher having B.Sc. qualification. Since the petitioners were even not getting the

B.Sc. untrained scale, they had represented alongwith several others before the Director, Primary Education, Bihar, Patna and ultimately against the said discrepancies, CWJC No.905/1983 was filed by several teachers in the Hon'ble Patna High Court and pursuant to the judgment and order in CWJC No.905/1983 the teachers having B.Sc. qualification along with these petitioners were all granted B.Sc. untrained scale since the days of their initial appointment, vide order dated 28.11.1990 by the Director, Primary Education, Government of Bihar.

11. The petitioners, in terms of their appointment letter, had to obtain the training and thereafter they were also required to pass the Training examination within a period of 3 years and on obtaining training they had also passed the said Training examination in the year 1995.

12. It is the case of the petitioners that since the Respondents/Authorities did not accede to the requests and prayers of the petitioners for granting the B.Sc. trained scale, they had no option but to approach this Court which they did by filing writ petition being W.P.(S) No.547/2003 before this Court and this court on being satisfied on the basis of facts, material and evidences available on record had directed to the District Superintendent of Education (Respondent No.6) to consider the claim of the petitioners for payment of Trained scale in the light of the

recommendation made within six weeks from the date of passing of the order by this Court.

13. Thereafter, the petitioners had filed their representation before the Respondent No.6 as well as on the other authority of the department but since the Respondent No.6 and the other authorities did not pass any order on the representation and order and direction of this Court in the matter of granting B.Sc. Trained scale to petitioners, they had no option than to file a contempt application before this Hon'ble Court being Contempt (Civil) Case No.466/2003.

14. Then the respondents authorities on examining several orders of the authority as well as the order and direction of Hon'ble Supreme court and High Court, vide order dated 23.08.2004 had been pleased to order for payment of B.Sc. Trained teacher scale with retrospective effect from the date 17.04.95 i.e. the date of passing the training examination.

15. It is the further case of the petitioners that thereafter the contempt case No.466/2003 was taken up and the petitioners' counsel informed to the Court that since the order of this Hon'ble Court dated 26.03.2003 has been given effect to, the contempt petition was disposed of.

16. Thereafter, vide office order as contained in Memo No.550/Pakur dated 12.05.2005 issued under the

signature of the Respondent No.6, i.e., District Superintendent of Education, Pakur, the B.Sc. Trained Scale granted to the petitioners vide office order dated 23.08.2004, has been cancelled, against which the present writ petition has been filed.

17. Mr. Ajit Kumar, learned senior counsel appearing for the petitioners, has submitted that it is a case where the writ petitioners have been granted the benefit of B.Sc. Trained Scale based upon the circular which was in vogue on the day when such benefit was granted. But, in highly arbitrary and illegal manner, the respondent authorities, based upon a Rule which has come subsequent to such decision, i.e., Bihar Taken Over Elementary School Teachers' Promotion Rules, 1993 (hereinafter referred to as the Rules, 1993), has taken decision by cancelling the aforesaid benefit.

18. It has been contended that once the right has been accrued based upon the circular issued by the State in exercise of power conferred under Article 166(3) of the Constitution of India, the same cannot be taken away by virtue of enforcement of any statutory Rule, if such Rule has been enacted subsequent to such decision.

19. Further contention has been made by referred to Rule 15 of the Rules, 1993 wherein it has been provided that whatever circulars/instructions were prevalent prior to

coming into effect of Rules, 1993, they will stand superseded but whatever decision taken prior to coming into effect Rules, 1993 has been saved by making specific stipulation in the said provision that such action will be said to be taken in terms of Rules, 1993.

20. The further contention has been made that on the similar circumstance, the learned Single Judge of this Court has passed an order in the case of ***Arbind Bhushan Dey and Others v. State of Jharkhand and Others*** reported in **2009 (1) JLJR 338** whereby and whereunder the rights have been adjudicated and in terms thereof the benefits have also been granted.

21. The further submission has been made by putting reliance upon the judgment passed by the Coordinate Division Bench of this Court in ***L.P.A. No. 346 of 2022 [Idris Ansari v. The State of Jharkhand and Others]*** along with other analogous cases wherein the issue of snatching away right on the ground of enforcement of Rules, 1993 has been dealt with and the Coordinate Division Bench has come to the conclusive finding that no rule can be said to be applicable with retrospective effect. It has been held therein that once the right has been accrued said to be vested, the same cannot be taken away by virtue of its enforcement with retrospective effect.

22. Submission has also been made that in the said judgment the Division Bench of this Court has taken into consideration the implication of the Rule 15 of the Rules, 1993.

23. Further, learned counsel has also submitted that based upon the judgment rendered by this Court in the case of ***Arbind Bhushan Dey and Ors. v. State of Jharkhand and Ors.*** (Supra) the similarly situated teachers have been allowed the Graduate Trained Science Teachers Pay Scale with effect from their respective dates on which they acquired teachers training.

24. Learned counsel for the petitioner, based upon the aforesaid argument has submitted that the impugned order, therefore, is not sustainable in the eyes of law, hence, it is fit to be quashed and set aside so as to extend the consequential benefits in consequence of the quashing of the said decision.

25. Per contra, Mr. Rohit, AC to AAG-I, learned counsel appearing for the State, has not disputed the fact that the legal issue has already been decided by the Division Bench of this court in ***Idris Ansari v. The State of Jharkhand and Others*** (Supra) and ***Arbind Bhushan Dey and Ors. v. State of Jharkhand and Ors.*** (Supra).

26. This Court has heard learned counsel for the parties and gone across the pleading made in the affidavits filed on behalf of respective parties.

27. The issue involved in this writ petition is as to whether the benefit which has been granted in favour of the writ petitioner based upon the executive instruction or circular, said to be policy decision of the State prior to the coming into effect of the statutory rule, can be taken away by retrospectively applying the statutory rule, as the case of the writ petitioners is.

28. Herein, the admitted fact is that the writ petitioners have been granted the benefit of B.Sc Trained Scale vide order dated 23.08.2004 based upon the Government policy decision.

29. The settled position of law is that once the right has been accrued, the subsequent rule framed carving out the eligibility criteria will not be considered to be a reason to recall the benefit already granted due to the reason that a vested right has been created. Here, it is relevant to refer the definition of vested right as has been held by Hon'ble Apex Court in ***MGB Gramin Bank v. Chakrawarti Singh*** **[(2014) 13 SCC 583]** at paragraph 11, 12 and 13, which read hereunder as:-

“11.The word “vested” is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:

“Vested.—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute ‘vested rights’.”

12.In Webster's Comprehensive Dictionary (International Edition) at p. 1397, “vested” is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.

30. Further, so far as the question of taking away the vested right is concerned, the Hon'ble Apex Court has laid down the proposition in the case of ***Chairman, Railway Board and Others v. C.R. Rangadhamaiah and Others*** reported in **(1997) 6 SCC 623** at paragraph 24 which reads hereunder as :-

“24. In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It

has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* [AIR 1967 SC 1889], *B.S. Vadera* [AIR 1969 SC 118] and *Raman Lal Keshav Lal Soni* [(1983) 2 SCC 33].

31. It is evident from the aforesaid interpretation of the Hon'ble Apex Court regarding the right will be said to be vested if conferred upon the party concerned legally and once, it has been created, the same cannot be taken away without following the legal remedies.

32. Further, the law has also been settled by taking note of the implication of Section 6 of the General Clauses Act wherein at the time of repealment of statute, the requirement of saving is also there for the purpose of saving the right which has been accrued by virtue of the enactment or the policy decision which has already been taken.

33. The effect of repealment has been discussed by Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and Ors. vs. Hirendra Pal Singh and Ors.***, reported in **(2011) 5 SCC 305** wherein their Lordships have held at paragraphs-22 & 24 which are being quoted hereinbelow:-

“22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly, i.e., pro tanto repeal.

24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance.”

34. In the case of ***Board of Control for Cricket in India vs. Kochi Cricket Private Limited and Ors.***, reported in **(2018) 6 SCC 287** wherein their Lordships have held at paragraph-43 which is being quoted hereinbelow:-

“43. Shri Sundaram’s submission is also not in consonance with the law laid down in some of our judgments. The approach to statutes, which amend a statute by way of repeal, was put most felicitously by B.K. Mukherjea, J. in *State of Punjab v. Mohar Singh*, SCR at pp. 899-900, thus: (AIR p.99 para 8).

“In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the

new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.”

This statement of the law has subsequently been followed in *Transport and Dock Workers’ Union & Ors. v. New Dholera Steamships Ltd.*, at para 6 and *T.S. Baliah v. ITO*, SCR at pp. 71-72.”

35. The Coordinate Division Bench of this Court in the case of ***Idris Ansari v. The State of Jharkhand and Others*** (Supra) has also considered the aforesaid issues and has quashed and set aside the impugned orders vide judgment dated 25.07.2023 and has directed for consequential reliefs to be paid in favour of the teachers (appellants in that appeal).

36. This Court, considering the aforesaid fact that the State has already extended the aforesaid benefit of B.Sc Trained Scale to other similarly situated teachers, is of the view that there cannot be any adverse decision by virtue of

enactment of subsequent rule once the right has been created.

37. As such, this Court, by putting reliance upon the judgment passed by the Division Bench of this Court in the case of ***Idris Ansari v. The State of Jharkhand and Others*** (Supra) and analogous cases as also in the case of ***Arbind Bhushan Dey and Ors. v. State of Jharkhand and Ors.*** (Supra) coupled with the fact that the similar benefit has already been extended in favour of the other co-employees/teachers, is of the view that the impugned order needs to be interfered with.

38. Accordingly, the impugned order as contained in Memo No.550 dated 12.05.2005 issued under the signature of the Respondent No.6, is hereby quashed and set aside.

39. In the result, the writ petition stands allowed.

40. Consequence to follow.

(Sujit Narayan Prasad, J.)

(Pradeep Kumar Srivastava, J.)