

(2023) 02 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13292 Of 2022

Abnara Khatoon

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 254
Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules,
2012 — Rule 15
Right of Children to Free and Compulsory Education Act, 2009 — Section 23(2)

Citation : (2023) 02 PAT CK 0064

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Madhurendra Kumar, Subhash Chandra Mishra, Pramod Kumar Singh

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.
2. Learned counsel for the parties agreed that the issue, involved in the present case, stands covered by the Judgment dated 19.10.2022 passed in C.W.J.C. No. 16214 of 2019 (Md. Ataur Rahman & Ors. Vrs. Union of India & Ors.) and analogous cases as reported in 2023 (1) B.L.J. 176 and the same falls within the Category- 'B'.
3. This Court in Category- 'B' cases decided as under:-
"CATEGORY 'B'
1. The petitioners in Category 'B' are those who have applied for training and have already been registered with the N.I.O.S. and S.C.E.R.T., but have not completed their training up to 31.03.2019 on account of different individual reasons.
2. There are also teachers who were registered with the N.I.O.S., but not called

for training on account of not having 50% minimum marks in the Intermediate. There were teachers who could not be called for training as either they were lower in the seniority or that they had not applied within time or that the number of seats were not available at that relevant time. Some of the teachers, who have completed their training, their result has not been declared on account of their not having 50% marks in the Intermediate examination. The writ petitions have been filed on behalf of the teachers jointly in a manner where in one petition there are several teachers with different facts in one petition. Therefore, I am not referring to facts of each individual but broadly they are in the aforesaid category.

3. Learned counsel, who is appearing in some of these cases submits that the result of training was declared by the respondents N.I.O.S. and S.C.E.R.T. after the cut off date that is in May, 2019, but some of the candidates result was withheld on account of not having 50% marks in the Intermediate examination, which they have acquired by way of improvement subsequently.

4. The other counsels, who have appeared for the teachers, who could not complete their training up to 31.03.2019, submits that the requirement of providing training was obligated on the State Government in terms of Rule 15 of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012. The duty to provide training was cast upon the Officers of the State Government, to allow the petitioners to participate in the training timely and on account of their inaction in sending them for training timely, they could not complete their training before 31.03.2019. Learned counsel submits that on account of fault of the State Authorities, the petitioners should not be made to suffer and their right to livelihood cannot be taken away on account of the same.

5. On the other hand, learned counsels appearing for the State Government have referred to the provisions of R.T.E. Act of 2009, which obliges all the untrained teachers to acquire training one way or other within a stipulated three years period as it existed even prior to the amendment made in 2017. Learned counsel submits that while it is true that the Rules of 2012 also mentions of the State Government to provide training to the said teachers, it in no manner restrained the teachers to obtain training at their own level and the fault of the petitioners in not completing their training cannot be put on the State Government.

6. With regard to the requirement of 50% at the Intermediate level, learned counsel appearing for the N.I.O.S. has stated that the said requirement has already been done away with by the N.I.O.S. and a related affidavit has been filed in this regard, therefore, those results which have been withheld on account thereto, shall be now declared and the teachers those who have passed shall be provided certificate of training. Similarly, the candidates who could not participate in the training on account of their not possessing 50% marks at the Intermediate level shall now be allowed to participate in the training.

7. Learned counsel appearing for the State submits that so far as opportunity of

two chances for clearing the training as per the regulations is concerned, it is for the S.C.E.R.T. to lay down its schedule of examination and the supplementary examination as and when held, the petitioners shall be allowed to participate.

8. I have reflected on the submissions made and the submissions as recorded hereinabove, the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 provide as per Regulation 15 as under for training:-

"15. Service Conditions of Niyojit teachers.-

(a) Consolidated pay- (i) the panchyat elementary teachers will get the consolidated pay as follows:-

* Trained teachers (basic grade) - 7000/- per month

* Untrained teachers (basic grade) -6000/- per month

* Trained teachers (Graduate grade) - 8000/- per month

* Untrained teachers (Graduate grade) - 7500/- per month

* Trained teachers (H.M. Middle School) -14000/- per month

(ii) The instructors will get 4000/- consolidated pay per month.

(iii) If in future, the state government takes a decision to revise their consolidated pay, they will get the pay accordingly.

(iv) No other allowances like dearness allowance, house rent allowance, medical allowances, transport allowance etc. will be given to the Panchyat elementary teachers and instructors employed under these rules.

(b) Pay increase:- (i) The evaluation ("efficiency test") of Niyojit teachers as directed by the government according to Employment Rules, 2006 will be taken. Based on evaluation (efficiency test), the trained teachers securing 45% in general category and 40% in reserved category will get Rs. 500 increase in their consolidated pay and untrained will get Rs. 300/- increase in their fixed pay after three years.

(ii) After that, the previously Niyojit trained teachers will get an increment of Rs. 170/- (one hundred and seventy) and untrained teachers Rs. 100/- (one hundred) every year. There will be no any increment to the teachers securing less mark than the prescribed. Increment shall not be given to the teacher securing less than determined marks. The teachers of general category securing less than 45% marks and the teachers of reserved categories securing less than 40% marks will be given one additional chance to improve their marks. Any teacher who get less marks than the prescribed minimum marks after the 2nd evaluation, he or she will be removed by the Niyajan Samiti from his/her post after serving show-cause notice.

(iii) The teachers employed as trained graduate teachers will get Rs. 300/- (three

hundred) increase in their pay every year. The teachers employed as untrained graduate teachers will get Rs. 200/- (two hundred) increase every year.

(iv) The teachers employed in basis grade according to the provisions of this Rule will not have to take efficiency test (except the teachers employed on the compassionate ground) and they will get the enhancement of pay as mentioned in sub rule (ii) above.

(v) The part time instructors will also have to appear in the efficiency test after three years. Lump-sum Rs. 300/- (Three hundred) shall be enhanced in consolidated pay to the efficiency test passed instructor.

After that they will get Rs. 100 increase in their pay every years.

(c) Age of retirement:- The employed teachers and instructor will retire on the date of completing 60 years of age.

(d) Training:- (i) The state government shall provide the facility of training as prescribed by the N.C.T.E. to the untrained teachers. On successful completion of training, the teachers will get the trained fixed pay from the date of the publication of result.

(ii) In service period training for trained and untrained teachers will be organised on regular basis."

9. The amended provisions takes into account, the provision as stood under Section 23 (2) of the R.T.E. Act of 2009, for ready reference provisions of Section 23(2) of the Act of 2015 deserves to be quoted:-

"(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years:

10. After the said proviso vide Amended Act of 2017, further proviso was added as under:-

"[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and compulsory Education (Amendment) Act, 2017.]"

11. The same was made effective from 01.03.2015. The Central Government has in terms of the Amendment mention about the qualification of any teacher to be

trained as on 31.03.2009. As stated, I have already held (supra) in cases relating to Category 'A' that the provisions of the Act will have to be implemented for the purpose of allowing teachers to teach at the Elementary School level and those who do not have the training, cannot be allowed to perform duties of a Elementary School Teacher.

12. Learned counsel for the petitioners have also submitted that their earlier period of service prior to acquiring a training should also be counted. However, this Court finds that the provisions of the Regulations of 2012 are subject to the provisions of the Act of 2009 and the Regulations of 2012 have to be read in conjunction with the provisions of the Act of 2009 in terms of Article 254 of the Constitution of India and, therefore, even though the education subject may fall in the concurrent list, the provision of Act of 2009 cannot be given a go by.

13. Thus, in view of the Act of 2009, the petitioners, who were working on the post after 2019 were without any authority. In view thereof, their earlier period of service before acquiring training cannot be counted for any purpose.

14. It is made clear that those whose services were dispensed with during the pendency of the writ petition, shall be appointed afresh from the date they have acquired the training.

15. In one of the case bearing C.W.J.C. No. 16790 of 2021 (Anita Kumari Vrs. The State of Bihar through the Principal Secretary), learned counsel has prayed that he should be allowed to continue as it is the fault of the N.I.O.S. and the State Government in not sending him for training.

16. In the opinion of this Court, no benefit can arise in favour of the petitioner as there is no estoppel against the law. The N.I.O.S. has taken a decision only now for allowing the candidates, who have not scored 50% marks in the Intermediate examination. Merely, because the petitioner was reinstated in 2017 and the training has already started in 2015, no right accrues to the petitioner on account of reinstatement in 2017 to claim that he should be allowed to continue even though he has not been trained. The petitioners would always be free to obtain training and thereafter apply afresh against new vacancies which may arise in future. Services of the petitioners cannot be continued on the said basis.

17. Those, who were disallowed to join training on account of not having 50% marks in Intermediate level, also cannot claim any benefit because of a subsequent decision taken now for dispensing with the 50% requirement. The decision taken by the N.I.O.S. is prospective and will apply for those who are to acquire training in future and also would apply of course on these cases where the result has been withheld. In those cases, the result shall be declared as already directed hereinabove.

18. Keeping in view above, the present bunch of petitioners, who have not acquired their training as on 31.03.2019 are held to be ineligible to hold the post of teacher after 31.03.2019 in the Primary Schools.

19. Amongst the present bunch of teachers, those who have already undergone the training and their result has been withheld for one reason or the other, shall now become eligible only if they have passed the training course. In view of candid statement made by the learned counsel for the N.I.O.S. pointing out that the requirement of obtaining 50% at the Intermediate level has been done away with, it is expected from the N.I.O.S. to declare the results of the teachers within a period of 15 days henceforth and if the teachers have already passed the training course, they shall be given the same benefit as given to the teachers of category 'A' namely that they shall be treated as freshly appointed teachers from the date they have acquired the training and from the date result is declared and have passed the examination and will be allowed to continue. Their earlier period of service shall not be counted for any purpose at the same time no recovery shall be made from the salary which they have drawn.

20. As regard the teachers, who have failed in the examination, the view taken as above, shall apply to them and, their services are liable to be terminated. However, it is for the State government to take a view whether those who passed the supplementary examination should be allowed to continue as freshly appointed teachers or not or otherwise they shall be allowed to participate in the fresh selections which may be conducted by the State Government. Such teachers who would be allowed to participate, in fresh selections will be given benefit of age relaxation considering that they were working on the post with a promise that they will be allowed to complete their training rendered out by the State Government."

4. Keeping in view above, the petition stands disposed of in the aforesaid terms mutatis mutandis.