

(2018) 05 PAT CK 0005

In the Patna High Court

Case No : Letters Patent Appeal No.516 of 2015 IN Civil Writ Jurisdiction Case
No. 2579 of 2015

Bharat Bhushan & Ors

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 01-05-2018

Acts Referred:

Citation : (2018) 05 PAT CK 0005

Hon'ble Judges : Jyoti Saran, Chakradhari Sharan Singh,

Bench : Division Bench

Advocate : Kumar Kaushik, Manoj Kumar

Final Decision : Allowed

Judgement

Heard learned counsel for the parties.

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from a judgment and order of the learned Single

Judge of this Court dated 12.2.2015 passed in C.W.J.C.No. 2579/2015, whereby the writ petition has been dismissed.

These writ petitioners approached this Court, inter alia, for questioning the order bearing Memo No. 7 dated 5.1.2015 issued under the signature of the

Joint Secretary, Education Department, Govt. of Bihar, whereby a decision was taken to grant Matric trained scale to such teachers appointed under

the Bihar Elementary Schools Teachers Appointment Rules, who had passed training examination in the second attempt from the date of holding such

examination i.e.31.7.2007. The petitioners also questioned the recovery order bearing Memo No. 376 dated 16.1.2015, whereby the orders were

issued to recover the amount received by the writ petitioners by virtue of the

earlier grant.

The facts leading to the impugned orders as noted from the pleadings is that these petitioners were appointed as Assistant Teachers on different dates

as mentioned in paragraph 5 of the writ petition and had participated in the Teachers Training Examination conducted after their appointment in May,

2004 but could not clear the examination in its entirety in the first attempt, rather had to appear and clear some papers in the second examination

conducted in the year 2007 which they had failed to clear in the first attempt. In other words, the petitioners appeared as compartmental candidate in

the second examination held in the year 2007 for clearing the papers in which they could not succeed. These facts are not in dispute. It is admitted

that the petitioners finally cleared the examination in the year 2007. It is by virtue of this decision that the petitioners got Matric trained scale from the

date they cleared the first examination held in May, 2004 but the grant has been cancelled by the orders impugned, inter alia, on grounds that the

petitioners would be treated passing the examination only in the year 2007, in the second attempt. The decision was accompanied with the recovery

order and it is feeling aggrieved that the petitioners approached this Court through the writ petition in question which was dismissed and hence, the

present appeal.

The appeal was heard and admitted vide order passed on 28.4.2015 with a stay of recovery directions. When this matter is taken up for hearing that

Mr. Kaushik invites the attention of this Court to an order passed by the same Court in C.W.J.C.No. 2892/2013 (Brajesh Kumar & ors. v. the State of

Bihar & ors.), a copy of which has been placed on record through the supplementary affidavit filed in the present appeal. He submits that the issue

raised by the petitioners herein was the issue raised by those petitioners and it is accepting the argument advanced by them that the 2nd attempt was

only for clearing the papers which those petitioners failed to clear in their first attempt, that treating those petitioners as compartmental candidates,

they were held entitled to the pay fixation with effect from the date they had appeared in 2004 examination.

Learned counsel for support, invites the attention of this Court to the opinion present at paragraphs 16 to 22 of the judgment to submit that the

judgment and order of the learned Single Judge passed in C.W.J.C.No.

2892/2013 would squarely cover the case of the present appellants- petitioners and it is simply because the attention of the learned Single Judge was not drawn towards such fact that even these petitioners were compartmental examinees of 2007 examination that the relief so granted to the petitioners in C.W.J.C.No. 2892/2013 eluded the present petitioners.

Since learned counsel heavily relies on the opinion present at paragraphs 16 to 22 of the judgment in the case of Brajesh Kumar (supra), we are persuaded to reproduce the extract thereof:

16. There cannot be any quarrel with the stand of the State with regard to all such candidates who either failed in the examination conducted in

the year 2004 in the entirety or just did not sit or got expelled from the examination conducted in the year 2004. Such candidates cannot be treated

to be candidates, who attempted to pass the training examination. Since Grant of matric-trained-scale is integral to passing of training

examination, no candidate, therefore, can claim as a matter of right grant of matric-trained- scale without actually passing the examination in toto.

17. Those, who passed the training examination by sitting in examinations held in the year 2007, would be treated to be candidates, who have passed

the examination in the second attempt. For them, the State Government has extended the benefit from the date of the examination, i.e. 31.7.2007. But

in the case of such candidates who had failed in only one or two papers in the year 2004 examination and were allowed to appear in the year 2007 as

a compartmental candidate, their case falls in different class. By understanding of the word compartmental and the various regulations, rules and

directives in relation to conduct of compartmental examination, there is no other view except one that a compartmental examination is part and parcel

of the main examination and they are like conjoint twins.

18. The advertisement of the Bihar School Examination Board also indicates that such candidates will be treated as compartmental candidates. If this

be so, then the claim of these category of petitioners have to be considered as those belonging to the same class of candidates, who passed the

training examination in the first attempt, meaning thereby that they will get the pay-scale from 1.10.2003. The case of such candidates, therefore, who

sat in the compartmental examination and which was delayed, because of reasons attributable to the State Government or Examination Board, will

have to be treated as part and parcel of such successful candidates, who were successful in the year 2004 examination.

19. The Court therefore, gives a direction that all such candidates, including these petitioners, whose claim will be individually verified whether they were compartmental examinees of the 2007 examination and who have passed their compartmental examination, conducted in the year 2007 would be treated to have passed in the first attempt, i.e. 2004 and would be entitled to pay-scale from 1.10.2003.

20. No recovery or deduction from salary, therefore, is required to be made from such candidates and if it has been made it is required to be either refunded or credited into the account of the petitioners or such candidates.

21. It is made clear that above decision has been rendered with regard to all such class of persons irrespective of the fact whether they have approached the High Court through the writ application or not, because the State must follow a uniform policy and cannot be seen to be encouraging litigation by compelling individuals to approach the Court for similar reliefs.

22. The writ applications, therefore, are allowed in terms of the above reiterating the fact that such candidates, who sat in the examination in the 2004, failed in some papers and were allowed to sit as a compartmental examinees, held in the year 2007, would be treated to have passed the examination in the first attempt itself and their entitlement of payscale will be from 1.10.2003 and not from the date they sat for the examination held in the year 2007, i.e. 31.7.2007.

All the writ applications are allowed in terms of the above.â??

(Emphasis supplied by us)

Mr. Kaushik, learned counsel for the appellants, submits that the direction issued by the Court to the respondents, to individually verify, whether or not

the claim advanced, would be covered by the judgment, the case of the present petitioners, as well, would fall within the directions so issued.

We have learned counsel for the parties and perused the records and in the nature of the facts noted hereinabove and the directions present at

paragraphs 16 to 22 of the judgment, the respondents are duly bound to consider the claim of these appellantspetitioners as well and in case they have

qualified as a compartmental candidate in the examination held in 2007 as advanced by Mr. Kaushik, they would be held entitled to the relief present in

the judgment and order passed by the learned Single Judge in the case of Brajesh Kumar (supra) which has been affirmed by the Division Bench

while dismissing the appeal of the State in L.P.A.No.1870/2015 vide judgment and order dated 17.1.2018.

For the reasons so discussed, the judgment and order dated 12.2.2015 passed by the learned Single Judge in C.W.J.C.No.2579/2015 is set aside and

the writ petition is allowed in the light of the directions so present in the case of Brajesh Kumar (supra).

The Letters Patent Appeal is allowed but with no order as to costs.