
(2010) 09 PAT CK 0077
In the Patna High Court

Chandra Kant and Others

APPELLANT

Vs

The State of Bihar and Others etc. etc.

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Citation : (2010) 09 PAT CK 0077

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—This batch of 88 Letters Patent Appeals arise out of judgment and order 17-4-2003 whereby the writ petitions preferred by a large number of writ petitioners, all untrained assistant teachers in Elementary Schools under the Government of Bihar having qualification of Intermediate, Graduate or Post-graduate claiming scale of trained matric teachers, were dismissed. The Judgment under appeal passed in C.W.J.C. No. 8032 of 1999 (Arbind Kumar and Ors. v. The State of Bihar and Ors.) and other analogous writ petitions also decides C.W.J.C. No. 10877 of 2002 from which L.P.A. No. 412 of 2003 has arisen and that has been argued as the leading case. In this appeal there are altogether 70 appellants. The facts, wherever necessary have been taken from the records of this appeal.

2. Before considering the appeals on merit it needs to be noted that facts are not in dispute and the basic issue is whether claim of the appellant for grant of matric trained scale is sustainable in the teeth of provisions in the Bihar Elementary School Appointment Rules framed under Article 309 of the Constitution of India for appointment on the post of teachers in elementary schools which were published in Bihar Gazette dated 1st October, 1991 although the notification of the Human Resources Development Department is dated 30th September, 1991 (for the sake of brevity, hereinafter described as the Rules). As noticed above, although the main controversy relates to giving matric trained scale to the teachers of the elementary schools having higher qualification but not possessing a certificate in teachers training, the appellants through the batch of writ applications in question also sought quashing of an order dated

16-1-2001 issued by the Deputy Secretary, Finance Department, Government of Bihar whereby they were denied the scale of pay of matric trained teachers on the ground that teachers training is a requisite qualification for grant of matric trained scale and excess payment made to the teachers on account of earlier order of the authorities granting them matric trained scale was ordered to be recovered in 20 equal installments.

3. Initially the writ petitions were disposed of by a learned single Judge by judgment and order dated 14-9-2001 with a direction to the State Government to issue necessary notification to implement the recommendations of the Fitment Appellate Committee (For brevity F.A.C.) in respect of elementary school teachers on the point in issue. Relief was granted to Graduate and Post-graduate untrained teachers only and not to Intermediate untrained teachers because there was no recommendation of F.A.C. in favour of the latter. The authorities were further directed not to make any recovery. The learned single Judge also directed the State Government to hold special examination for those teachers who had undergone training while in service.

4. The aforesaid judgment of learned Single Judge dated 14-9-2001 was challenged by Prathmik Adhyapak Sangh and some Intermediate untrained teachers through Letters Patent Appeals which were allowed on 16-4-2002 by a judgment of the Division Bench in the case of Prathmik Adhyapak Sangh and Others Vs. The State of Bihar and Others Those appeals were allowed not on consideration of the matter on merits but only on the principle of likelihood of bias because the learned single Judge who had heard the writ petition with consent of the parties had also dealt with the matter as Chairman of the F.A.C. As a result, the writ petitions were directed to be heard afresh by another learned single Judge and after fresh hearing were dismissed by the judgment and order under appeal.

5. It is not in dispute that earlier to 1991 i.e., before the Rules were framed for appointment to the post of teachers in the elementary schools, the minimum qualification was matriculation and a certificate of basic teachers training of two years duration. However, even the untrained teachers were appointed in certain subjects on the plea of non-availability of trained teachers and due to relaxation in the case of lady candidates and candidates belonging to the minority community. Admittedly large number of untrained teachers having higher qualification than matriculation had been appointed prior to 1991 in the matric trained scale whereas the other scale was of matric untrained.

6. On considering reports of Fitment Committee of 1989 constituted by the State Government and also the report of Anomaly Removal Committee, the State Government issued a notification on 18-12-1989 and teachers of the elementary schools were placed in two categories. One was of matric untrained teachers in the scale of Rs. 975-1540 and the other consisted of matric trained, Intermediate trained, Intermediate untrained and Graduation untrained, placed in matric trained scale of Rs. 1200-2040.

7. By a policy decision dated 5-3-1991 the requirement of teachers training for appointment as assistant teachers for elementary schools was dispensed with and instead provision was made for in-service training and in that light the Bihar Elementary Schools Teachers Appointment Rules i.e. the Rules were framed on 8-10-1991. Pursuant to an advertisement dated 8-10-1991 about 25 thousand teachers were appointed under the Rules. The writ petitioners being untrained were appointed in the year 1994 in matric untrained scales of Rs. 975/- 1540/-

8. At this stage it is relevant to notice Rule 11 of the Rules which provides for appointment and prescribes the scale of pay and reads as follows:

11- ojh;rk lwph ls vkj{k.k fu;eksa dk vuqikyu djrs gq, fjfDr;ksa dks Hkjus ds fy, fuEu izdkj dkjZokbZ dh tk; xh&

L1? tks mEehnokj izf?kf{kr gS mUgsa eSfV~zd izf?kf{kr osrueku esa fu;qDr fd;k tk;xkA

L2? tks mEehnokj vizf?kf{kr gSa mUgsa eSfV~zd vizf?kf{kr osrueku ds izkjfEHkd osrueku esa fuEu ?krksZ ds lkFk fu;qDr fd;k tk;sxk%

Ld? izf?k{k.k ds fy, izfrfu;qDr fd;s tkus ij mlesa i;kZIr dkj.k ds Hkkx u ysus ij lsok lekIr dj nh tk;sxA

([k) izf?k{k.k mijkUr ijh{kk yh tk;sxA mlesa mEehnokj ;fn IQy ugha gksrk gS rks mls ,d ekSdk vkSj fn;k tk;sxA ;fn nwljh ckj Hkh og vuqRrh.kZ jgrk gS rks mldh lsok lekIr dj nh tk;sxA

(x) izf?k{k.k dh vOF/k esa le;= ij fu/kkZfjr nj ij o`frdk ek= ns; gksxA A izf?k{k.k vOF/k ds fy, osru ns; ugha gksxA

(?k) dafMdk ^^[k** esa fufnZ?V ijh{kk esa mRrh.kZ gksus ds mijkUr eSfV~zd izf?kf{kr osrueku fn;k tk;sxA

9. The Rules stipulate for a written examination and on the basis of marks obtained therein and in the light of Rules for reservation, preparation of a seniority list (select list) in accordance with the provisions in Rules 10 of the Rules. Rule 11 mandates to fill up the vacancy from the seniority list with due compliance of rules for reservation and to appoint (i) trained candidates in matric trained scale, (ii) untrained candidates in matric untrained scales. While directing to appoint untrained teachers in the initial scale of matric untrained scales the following conditions have also been prescribed for the untrained appointees as per Sub-rule (2) of Rule 11: (a) Their services will be terminated if without sufficient reasons they do not participate in the training when required to do so. (b) after training an examination shall be held and those candidates who fail therein will be afforded another opportunity, but if they will fail again then their services will be terminated, (c) during the period of training the appointees shall be paid only a stipend at the prescribed rate. No salary shall be payable for the training period (d) after passing the examination mentioned in (b) matric trained scale shall be granted.

10. In the judgment of the Division Bench dated 16-4-2002 reported in Prathmik Adhyapak Sangh and Others Vs. The State of Bihar and Others it is mentioned that after appointment about 79% teachers were sent for training. The decision of the State Government to appoint even untrained teachers was challenged before this Court unsuccessfully and SLP No. 23187/98 preferred before the Apex Court was disposed of on 5-9-1997. The same is reported in Ram Vijay Kumar and Others Vs. State of Bihar and Others, The Apex Court did not interfere with the impugned decision of the State Government but directed to take the required steps for training of untrained teachers from October, 1997 so that all could get a chance of getting duly trained within two years time. Though majority of untrained teachers obtained training while in service but no examination was held till May, 2004, whereafter the result was published on 20th June, 2005. Only then the successful teachers have been allowed matric trained scale. The dispute is mainly for the earlier period during which, on account of different orders the writ petitioners claim to have received their pay in that scale till 30.9.2003. Writ petitioners want that scale to be formalized and extended till results of training in June, 2005. State insists on recovery of excess payment made till September, 2003. After hearing had concluded, at the instance of State this matter was against listed for clarification of aforesaid facts by both the parties.

11. The two scales provided by the State Government in its resolution dated 18-2-1989 though of the period prior to the notification of the Rules in the 1991, fell for reconsideration due to general demand of the State Government Employees and for some reasons got implemented in respect of writ petitioners also. A decision contained in memo No. 999 dated 7-6-1995 issued under the signature of Director (Primary Education), Govt. of Bihar discloses that the decision was taken in the light of an agreement between the Government and some Unions/Associations. That decision did not make any distinction between the teachers appointed under the earlier Rules and those appointed in 1994 pursuant to the Rules of 1991. As a result the writ petitioners got matric trained scale on account of their higher qualification although they were not trained, with effect from the date of their appointment.

12. The controversy re-surfaced when State Government employees raised a demand for grant of Central Pay Scales. The Finance Department, Government of Bihar on 2-1-1998 constituted a Fitment Committee to consider the issue relating to payment of scale etc. admissible to the Central Government employees. The Fitment Committee in its report in respect of teachers of elementary schools noticed that teachers training was mandatory requirement for appointment in a Central Government School and therefore the committee recommended for two scales, one for matric trained teachers and the other for untrained teachers irrespective of their qualification, as was the provision in the Rules. The recommendations were accepted with some modification leading to resolution dated 8-2-1999 whereby the pay scales of the Government employees including the elementary school teachers were revised with effect from 1-1-1996. The matric trained teachers were provided with the scale of Rs. 4500-7000/- and

the untrained teachers were granted the scale of Rs. 3050-4590/-. Because of such decision there was resentment amongst the affected untrained teachers and that led the State Government to issue a circular dated 25-6-1999, which provided that untrained teachers who had completed one year in service training by 1-1-1996 but could not pass the examination due to non-holding of examination shall be provisionally granted the matric trained scale subject to the condition that they shall have to pass the training examination whenever it was held next, otherwise, the excess amount will be recovered from them.

13. This notification was challenged by some teachers through C.W.J.C. No. 7103/99 which was allowed and the notification dated 25-6-99 was quashed by judgment and order dated 17-5-2000. Thereafter the State Government issued an order dated 16-1-2000 adopting the recommendation of Fitment Committee and reiterating its earlier decision dated 8-2-99 to the effect that training was a condition precedent for grant of matric trained scale and therefore untrained teachers even with higher qualification could not be given such scale and the amount paid to them on account of such higher scale shall be recovered in twenty equal installments. This decision dated 16-1-2001 is basically under challenge in all the writ petitions from which the order under appeal arises.

14. It is relevant to note that during the pendency of C.W.J.C. No. 7103 of 1999 the employees of the State Government in various departments protested against the recommendations of the Fitment Committee as well as the decision of the State Government in respect of such recommendations leading to constitution of a Fitment Appellate Committee (F.A.C.) by the State Government vide notification dated 15-1-2000. The same was presided over by a learned sitting judge of this Court. It is also significant to note that prior to constitution of F.A.C., there was an agreement between the Teachers Association and the State Government dated 7-5-99 which is contained in annexure-10 and mentions that the dispute raised would be referred to F.A.C. and recommendations of the same would be acceptable to both the parties.

15. The recommendations of the F.A.C. in respect of untrained graduate teachers of the elementary schools were for giving matric trained scale notionally with effect from 1-1-1996 and effectively from 1-4-1997 but such benefit was not recommended for untrained teachers having qualification of Intermediate but from them also excess amount was not to be recovered. These recommendations have remained pending with the Government without any decision one way or the other which is largely because of lodging of writ cases and decisions by this Court.

16. On behalf of appellants it was highlighted that while the recommendations of the F.A.C. could not be implemented in the State of Bihar because the judgment and order dated 14-9-2001, passed in these writ petitions for implementation of those recommendations was set aside on a technical ground by judgment of a Division Bench dated 16-4-2002, the State of Jharkhand which was created in the meantime, implemented the recommendations of the F.A.C. in respect of

elementary schools through a decision contained in letter No. 4568 dated 5th July, 2002 issued by the Finance Department of the Government of Jharkhand (Annexure 14 to the memo of appeal). On the other hand, the State of Bihar through letter dated 4-9-2002 issued by the Finance Department reiterated its decision to recover excess payment of salary in 20 equal installments while adopting new pay-scales as recommended by the Fitment Committee. The point sought to be made out on behalf of appellants is that only because they remained in the State of Bihar they are deprived of benefits of recommendations of the F.A.C. while such benefits have been given to other similarly situated elementary school teachers who got allocated to the newly created State of Jharkhand.

17. A judgment of this Court dated 12-9-2002 in C.W.J.C. No. 122 of 2001 (Smt. Kumari Kalpana Rani v. The State of Bihar and Ors.) has been enclosed as annexure-8 to show that in the said case an untrained assistant teacher who had completed training course on 10-5-99 made a prayer for a direction upon the State Government to hold examination for the training course already completed and this Court after noticing the observations and directions of the Apex Court in the case of Ram Vijay Kumar and Others Vs. State of Bihar and Others, directed the Government of Bihar to hold the examination within a period of six months. As noticed earlier the examination was held much later in 2004 and result was published on 20.6.2005.

18. On behalf of appellants Mr. Rajendra Prasad Singh, learned Senior Advocate highlighted the fact that as per Government decision of 1989 dated 18-12-89 the State of Bihar recognized equivalence of work of teaching by matric trained teachers and untrained teachers having higher qualification of Intermediate or Graduation and therefore they were allowed the same pay-scales but for no good reasons, on the plea of examining equivalence for grant of Central pay-scale, appellants were placed in lower pay-scale as compared to a matric trained teacher. Thus an effort was made to convince this Court to interfere on the ground of arbitrariness and unfairness in the impugned decision. Secondly, by reference to higher pay-scale of matric trained or untrained graduate teachers in the State of Jharkhand, again an attempt was made to indict the impugned action of the State of Bihar as unfair and arbitrary. Thirdly, it was submitted that in view of written agreement between the Association representing the appellant teachers and the State of Bihar that both the parties shall accept the decision of the F.A.C., the State Government should not be permitted to back out from the agreement by not accepting the recommendations of the F.A.C. In support of this plea a recent Division Bench Judgment dated 20-4-2010 passed in L.P.A. No. 859/2007 (State of Bihar and Ors. v. Sanjay Kumar and Ors.) was relied upon and lastly, assailing the views expressed in the judgment of the learned Single Judge under appeal it was submitted that Rule 11 of the Rules can co-exist with the earlier administrative decision dated 18-12-89 and therefore the learned Single Judge should not have denied relief to the appellants on the basis of aforesaid Rule 11 of the Rules. Besides the aforesaid submissions on merit, it

was strenuously urged in the alternative that even if the appellants case is not accepted on merits, no recovery should be made of the alleged excess salary because the excess payment was not made on account of any misrepresentation or fraud on the part of the appellants nor it was on account of any malafide or dishonest act by any of the appellants. For this purpose reliance was placed upon several judgments of the Supreme Court including that in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others,

19. Mr. Tej Bahadur Singh, learned Counsel appearing for some of the appellants claimed for relief on the principle of equal pay for equal work and also pleaded for restraining the respondents from making any recovery in view of law laid down by the Apex Court .

20. Mr. Manik Vedsen, learned Counsel for some of the appellants adopted a technical plea that the learned single judge could not have relied upon Rules of 1991, in support of impugned order dated 16-1-2001 because such a plea is not incorporated in that order. For this he relied upon the judgment of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, He also pleaded against recovery on the ground that higher scale was allowed by the Government itself and such action was not without jurisdiction. Lastly, he placed reliance upon the doctrine of legitimate expectations on the basis of provisions in Rule 11 of the Rules. His submission is that under the rules the untrained Matric scale to untrained teachers was a short term and temporary phenomena because the Government was required to provide for in-service training and opportunity to complete the training; it had the duty to hold the required examination within a reasonable time so that only those who could not succeed may suffer the lower pay-scale or even the prospect of losing their service. According to him since the Government failed to provide the infrastructure of in-service training along with the required examination for a long period, the appellants should not be made to suffer and this Court should hold that the appellants' deprivation of matric trained scale for period prior to result of training on 20.6.2005 is illegal and arbitrary and should order the State Government to provide them the Matric trained scale at least from expiry of two years time fixed by the Apex Court in the case of Ram Vijay Kumar and Ors. v. State of Bihar and Ors. (supra). According to Mr. Vedsen, Rule 11 of the Rules contains a complete scheme and the State Government must relax the rigours of Sub-rules (1) and (2) of that Rules on the ground of its unworkability due to failure of the State Government in providing in- service training and examination for long years.

21. On behalf of some of the appellants Mr. Vinod Kanth, learned Senior Counsel also advanced the argument that the Executive decision dated 18-12-89 being within the jurisdiction of the State Government by virtue of Article 162 of the Constitution of India should be given equal force as the Rules of 1991 framed under Article 309 of the Constitution of India. According to him, the provisions in respect of pay-scale to untrained teachers prescribed in 1989 decision and

subsequently in the Rules can co-exist. Secondly, he submitted that in the light of law laid down by a Constitution Bench of the Apex Court in the case of *Purshottam Lal and Others Vs. Union of India (UOI) and Another*, the nonimplementation of the report of FAC in respect of elementary school teachers, while it has been implemented in respect of other services, would be violative of Articles 14 and 16 of the Constitution of India. He also pleaded that the State Government should not be allowed to make any recovery of the alleged excess payment and lastly he supported the plea that Rule 11 of the Rules is required to be relaxed by the State Government in order to do justice to the appellants.

22. On behalf of the State, learned Advocate General countered the submissions of Mr. Rajendra Prasad Singh alleging unfair and arbitrary classification so as to deprive the appellants of matric trained scale, by placing reliance upon the judgment of the Supreme Court in the case of *National Textile Corporation (M.P.) Ltd. v. M.R. Jadhav* (2008) 7 SCC 31. That judgment clearly shows that while considering a dispute over pay-scale raised by plus two teachers from State of Bihar, the Apex Court found ample justification in creation of two classes, one of trained teachers and the other of untrained teachers, for grant of different pay-scales. After laying down the law clearly in paragraph-32 of the judgment in the aforesaid case, the Apex Court however, did not deprive the affected teachers of the benefit of higher pay-scale in view of peculiar facts noted in paragraph-42 of that judgment. These included the existence of similar agreement between the teachers' representatives and the State Government as is available in the present case. Such agreement was made before the dispute was referred to the F.A.C.

23. We have no difficulty in accepting the submission advanced on behalf of the State that classifying teachers as trained and untrained for grant of two different scales cannot be termed arbitrary or unreasonable and such action will not violate either Article 14 or 16 of the Constitution of India. Once they can be treated as two classes, the plea of equal pay for equal work must also fail. The other submission advanced for showing the arbitrariness on account of decision by the Jharkhand State is also found to be of no substance because action of the State of Bihar must be judged on its own merit and not on the touch stone of an executive decision taken by a neighbouring State. As a policy, the State of Jharkhand opted to accept the recommendations of F.A.C. whereas when this Court disposed of these writ petitions at the first instance by ordering for action in accordance with those very recommendations, the State of Bihar joined some others, particularly untrained Intermediate teachers in challenging that decision by the learned single judge leading to remand and fresh decision by the order under appeal. As a principle of law, it cannot be held that the State of Bihar must act as per wisdom of another State. However, the fact remains that similar appointees of 1994 who were untrained but graduates have been granted matric trained scale in the State of Jharkhand from a much earlier date.

24. The submission based upon the written agreement between the

representatives of teachers and the State Government while referring the dispute to F.A.C. requires some deeper consideration because as noticed above, by a recent decision, a Division Bench of this Court in L.P.A. No. 859/07 disposed of on 20-4-2010 held that the State Government having made particular representation to its employees on which they called off their strike and when such representation was reduced to an agreement in writing, cannot be allowed to back out from its representation and promise.

25. In reply, learned Advocate General sought to raise a plea that the F.A.C. was required to make recommendations within the terms of reference applicable to the Fitment Committee as and when its recommendations fell for consideration by the F.A.C. In effect, the submission is that an unacceptable recommendation of F.A.C. can be ignored by the State Government on the grounds permissible in law, such as on account of limitations flowing from terms of reference or on account of recommendation being violative of Rules or law or the Constitution. Fortunately, we are not required to examine this aspect further because as noticed earlier the recommendations of F.A.C. in respect of elementary school teachers have neither been accepted nor rejected by the State Government and even before such decision could be taken, the recommendations were incorporated in the judgment rendered earlier in this case on 14-9-2001 and were ordered to be implemented. But now after remand the learned single judge has taken a different view and has not found those recommendations acceptable on account of Rule 11 of the Rules. In such circumstances, this Court is not called upon to test the legality of any decision of the State Government as such decision has been pre-empted by judgment of this Court. In such circumstances, the agreement between the employees and the State Government cannot be of much significance. Here it may be usefully noted that when the learned Single Judge ordered for implementation of the recommendations of the F.A.C. such decision was challenged by some of the appellants, the State Government as well as by representatives of teachers. This conduct shows that not only the State Government but the other parties, the representatives of the teachers have also chosen to avoid that agreement. The reason lies in the facts that the recommendations allowed the claim of only graduate untrained teachers but not that of Intermediate untrained teachers. In such a situation, when the earlier Division Bench permitted the teachers and their representatives to challenge the decision of the learned single judge adopting recommendations of F.A.C, it will not be proper or in the interest of justice to hold both the parties bound by the agreement made on 7-5-1999 at the time of referring the issues raised by the agitating employees to the FAC.

26. The two main issues which are now required to be discussed are as follows: (i) Whether it is permissible for the State Government to accept the demand of the appellants and grant the reliefs in the teeth of provisions in Rule 11 of the Rules and (ii) whether the provisions of Rule 11 had become unworkable leading to great hardship to the untrained teachers like the appellants and therefore the State should be directed to relax the said rule as a one time measure and take a

decision for shifting the date of grant of matric trained scale to any earlier date because of unusual delay in holding the examination of training and publication of result in June 2005.

27. Rule 11 of the rules has already been extracted and noticed earlier. The wordings of the entire scheme in that rule are clearly mandatory and do not permit any deviation through an administrative decision by the State. In the matter of grant of scale while appointing untrained teachers under the Rules framed under Article 309 of the Constitution, the State Government had no scope to obliterate the qualification between trained teachers and untrained teachers. They had to be appointed and placed in two different scales and the untrained teachers can get the other higher scale only on fulfilling the conditions prescribed in Rule 11 i.e., only on passing the training examination. Earlier executive decision of 1989 may exist in respect of earlier appointees but that cannot be applied to those elementary teachers who were appointed after the framing of the rules of 1991. For such later appointees like the appellants the Rules under Article 309 of the Constitution alone shall hold the field, particularly when the provisions in Rule 11 are found to be mandatory. Rules under Article 309 of the Constitution have legislative flavour and executive decision in the light of power available to the State under Article 162 of the Constitution cannot supplant the Rules framed under Article 309 of the Constitution. On facts, it is found that decision of 1989 do not supplement the Rules rather they clearly run counter to such rules. Hence, for the teachers appointed after enforcement of 1991 Rules, the decision of 1989 cannot co-exist in the matter of appointment in the scales prescribed by the Rules.

28. Such later appointees have to be granted pay-scales as determined by the Government from time to time in accordance with Rule 11 of the Rules. So far agreement requiring acceptance of recommendations of FAC is concerned, there can be no quarrel with the proposition of law that there can be no estoppel against statute. Further, a writ court can not issue mandamus against provisions in the Rules which do not suffer from any legal infirmity. The judgment of Apex court in the case of *Purushottam Lal v. Union of India* (supra) was in an entirely different fact situation and related to grievance by members within a particular service. It has no application in the facts of the present case.

29. In view of aforesaid discussions and findings, we find ourselves in agreement with the views of the learned single judge that grant of lower scale of pay to untrained teachers is in conformity with Rule 11 of the Rules and is also based on sound reasons. Hence, it is not possible to issue a writ of mandamus to implement the recommendations of the FAC. Grant of matric trained scale to untrained teachers cannot be directed by this Court, particularly due to provisions in the Rules. In that view of the matter the Apex Court also in the case of *Ram Vijay Kumar and Ors. v. State of Bihar and Ors.* (supra) directed only for completing the training of untrained teachers within two years.

30. Coming to the last issue, we find merit in the submission advanced on behalf

of the appellants that due to inability of the State Government to hold the required examination within a reasonable time, the appellants who were successful, have suffered undue hardship. In that view of the matter, when the examination could not be held within two years in spite of directions of the Apex Court and even later, as per directions of this Court, we are of the view that the State Government which has the necessary powers, must take steps to relax Rule 11 of the Rules as a one time measure within a reasonable time and take a prompt decision to grant matric trained scale to the teachers who have passed the in-service training examination in June, 2005 from any date which may be found suitable and reasonable so as not to affect such teachers adversely for the unusual delay in holding the training examination. It would be reasonable and appropriate to grant matric trained scale to such teachers as indicated above from any reasonable date, may be from the date when the period of two years fixed by the Apex Court for completing the training of such teachers expired without compliance or even from 1-10-2003, i.e. when actual payment in Matric trained scale was stopped. Keeping in view the requirements of Article 14 of the constitution, benefit of advancing the date for grant of Matric trained scale, as indicated above will also be made available to such teachers who may pass the training examination in the second attempt. For them the date will vary but benefit should be on same lines as given to those who have passed in the first attempt.

31. We, accordingly direct the respondents to take appropriate decision in the light of observations and directions indicated above within three months from today.

32. We have no hesitation in holding that in the light of law laid down by the Supreme Court and by this Court, no recovery shall be made of the alleged excess payment made to the untrained teachers on account of payment to them in matric trained scale. In the present case the excess payment was made by the authorities on account of wrong interpretation or ignorance of Rule 11 of the Rules and the employees concerned had no means of knowing that they were getting payment by mistake. On that principle, as enunciated in the case of Syed Abdul Qadir v. The State of Bihar (supra), we restrain the respondents from making any recovery from the appellants. It is made clear that this order shall be applied by the respondents in case of appellants as well as all other similarly situated teachers appointed as untrained teachers after coming into force of 1991 Rules.

33. The appeals are accordingly allowed to the aforesaid extent.

There shall be no order as to costs.

Hemant Kumar Srivastava, J.

I agree