

(2016) 08 PAT CK 0063

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.11303 of 2014

Kishwar Sultana

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 PLJR 454

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Anuj Kumar, AC to GP 24, for the Respondents; Mr. Amarendra Kumar, Advocate, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Ajay Kumar Tripathi, J.(Oral) - Petitioners are all working as Assistant Teachers. They were all untrained when they came to be appointed and, therefore, the necessity of not only completing the training but of passing the training examination was made a must for grant of matric trained scale. There is history behind such matters but they are not of relevance so far as the issue raised in the present writ application is concerned.

2. These petitioners want a direction upon the respondents to grant them benefit of matric trained scale from a date prior to what has been conferred upon them by virtue of Annexure-8, dated 18.1.2014.

3. It is rather unfortunate that at times policy decisions are taken by the State of Bihar with very limited objective and purposes without understanding the implication of such decision or whether such decisions are in conformity with the law of the land and the statute governing such issues.

4. By way of an innovation and only with the objective of providing some kind of training to these untrained teachers, a tie up was done with an Open University for a short duration course without taking the approval of such course or

contents thereof from National Council of Teachers Education. Since the National Council of Teachers Education (NCTE) is the statutory body and is creation of a central statute, any decision with regard to such training and the courses to be imparted to the teachers in a State has to conform to the standards and norms laid down by NCTE. When the issue was raised and NCTE refused to give any recognition to such innovation or course, as a special gesture and on earnest request made by the State of Bihar, a capsule course for training for six months was evolved and it was made mandatory to complete that course and pass the examination thereafter to derive benefit of the previous course, which was rendered by the Open University.

5. The petitioners want grant of benefit of matric trained scale from an earlier date or at least from the date when these petitioners had completed earlier module, which is known as DPE course.

6. Ironically, the stand of the State in the counter affidavit is that since the DPE course was not an approved course by the NCTE and on the directive of the NCTE a six months special capsule was added to the DPE course and since it was mandatory, to beget recognition to the said course, the actual date of passing of the course in entirety or in to is the date from which the benefit of matric trained scale can be given and this is what has been done by the respondents.

7. The submission of the counsel for the petitioners now is that the petitioner cannot be faulted or punished for doing a course, which has been held to be unrecognized or invalid, because they were made to undergo that course at the instance of the State Government.

8. The Court can only observe that if the State Government compelled the petitioners to do an invalid course, the petitioners can sue the State authorities for appropriate compensation but that cannot be made a basis for conferring a seal of approval and that too judicial kind to otherwise an illegal act or decision based on which an innovative kind of course was used to show training of the petitioners.

9. In the above facts and circumstances, the petitioners can only be treated to have passed the training examination after completing the entirety of the training and the examination including the module, which was suggested and worked out by the NCTE to redeem the situation. No benefit can accrue to any person who has otherwise not completed the training or on a training, which has no statutory recognition by the statutory authority.

10. A submission is made that a direction should be issued upon the respondents not to effect any recovery for the benefit already granted and in support thereof counsel for the petitioners draws the attention of this Court to a decision rendered in the case of State of Punjab & others v. Rafiq Masih (White Washer) & others, reported in (2015) 4 SCC 334.

11. The principle laid down by the Hon''ble Apex Court has been taken into

consideration by this Court but keeping in mind that this benefit has been extended to the petitioners not in the distant past and they are still in service, the basic principle that no employee can beget an advantage of any kind of payment from public exchequer beyond what he is entitled to will have to be kept in mind and no recovery principle cannot be used as a proposition of law in all facts and circumstances.

12. In view of the same, writ application stands dismissed. No relief can be extended to the petitioners for the above stated reasons.