

---

**(2013) 01 PAT CK 0102**  
**In the Patna High Court**  
**Case No : CWJC No. 13734 of 2012**

Kumar Rajesh Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

---

**Date of Decision :** 30-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 309

**Citation :** (2013) 3 PLJR 786

**Hon'ble Judges :** Samarendra Pratap Singh, J

**Bench :** Single Bench

**Advocate :** Avanindra Kumar Jha in CWJC No. 13734 of 2012, Mr. Bipin Kumar in CWJC Nos. 14696, 14678, 14692, 14675, 14664 of 2012, Mr. Bipin Kumar in CWJC No. 14678 of 2012, Mr. Rama Kant Singh in CWJC No. 14652 of 2012, Mr. Vijay Kumar Singh in CWJC No. 14739 of 2012 and Mr. Arvind Kumar Singh in CWJC No. 19628 of 2012, for the Appellant; Manikant Mishra in CWJC No. 13734 of 2012, Mr. Sanjay Kr. No. 1 in CWJC No. 14696 of 2012, Mr. Ajay in CWJC No. 14678 of 2012, Mr. Rajiv Roy in CWJC No. 14692 of 2012, Mr. Shyam Kishor Sharma in CWJC No. 14652 of 2012, Mr. Parth Sharthi in CWJC No. 14675 of 2012, Mr. Prashant Pratap in CWJC No. 14664 of 2012, Ms. Kumari Amrita in CWJC No. 14739 of 2012 and Mr. Ajay Bihari Sinha in CWJC No. 19628 of 2012, for the Respondent

---

## Judgement

Samarendra Pratap Singh, J.—The issues involved in these batch of writ applications are whether untrained teachers appointed in 1999 and 2000 or, subsequent to 1994 would be entitled to matric trained scale if they passed the training examination after 1.10.2003 with effect from said date in view of Government resolution dated 29.7.2011 (Annexure-6) and letter dated 15.10.2012 (Annexure-8) issued in background of Chandra Kant and Others Vs. The State of Bihar and Others etc. etc. , and whether the respondents are justified in recovering excess salary paid which got implemented in respect of some of them on account of interim orders of this Court. The petitioners are Assistant and Middle School Teachers posted in different Elementary Schools. None of them possessed training certificate at the time of their appointment. The

years of appointments varied from 1988 to 2003. A Comprehensive chart is detailed as follows:--

2. The petitioners have sought payment as well as grant of Matric trained scale with effect from 1.10.2003. Some of them have further prayed to restrain the respondents from recovering excess amount paid in Matric Trained scale from time to time.

3. One thing runs common in these batch of writ applications that all the petitioners were appointed on compassionate ground and were Matric untrained at the time of their appointment.

4. For the sake of convenience C.W.J.C. No. 13734 of 2012 is taken as a lead case for referring to pleadings, party, positions and annexures.

5. The claim of the petitioners for grant of Matric trained scale is founded on Executive orders dated 29.7.2011 and 10.2.2012 contained in Annexures-6 and 8 of C.W.J.C. No. 13734 of 2012 as well as order dated 23.9.2010 passed in a batch of L.P.A. bearing L.P.A. No. 412 of 2003 Chandra Kant and Others Vs. The State of Bihar and Others etc. etc. .

6. The petitioners state that most of them are Graduates and some of them even possess Post-Graduate degrees. However, they were untrained at the time of appointment. The appointment letters stipulated that the teachers must undertake training course within two years. Their grievance is that they were sent for training belatedly and the first examination was held only in the year 2004, the result of which was published in the year 2005.

7. Most of the petitioners, who were appointed in 1994 or prior to it, got Matric trained scale irrespective of being untrained primarily due to different orders of this Court as well as also on account of agreements that reached between the Government and Association of Teachers from time to time.

8. They claim that their cases stand squarely covered under the decision rendered in case of Chandra Kant and Others Vs. The State of Bihar and Others etc. etc. , as such they are entitled to similar benefits as meted out to the appellants of the said case. The petitioners" in this context particularly refer to paragraph 30 of the judgment, which is quoted hereinbelow for easy reference:--

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.

9. The petitioners fairly state that the observation made in paragraph 30 of the judgment were partially modified vide order dated 8.8.2012 passed in M.J.C. No. 4075 of 2011. Paragraph No. 6, which is relevant in the context is quoted hereinbelow:--

6. From a perusal of paragraph 30 of the judgment extracted above, it is evident that this Court has not applied its mind as to what would be reasonable and appropriate date for grant of Matric trained scale to such teachers as the petitioners. In view of aforesaid facts, particularly when it is not in dispute that actual payment of Matric trained scale was stopped from different dates and not from 1.10.2003, the illustration that the date may be fixed even from 1.10.2003, which was only by way of simple observation, is modified. That observation may be treated to have been deleted and instead the State Government shall apply its mind with reference to all the relevant facts and fix the date for grant of Matric trained scale to the concerned teachers on the basis of other observations keeping in mind that no adverse effect is caused upon seniority of the concerned teachers by fixing of the date for grant of Matric trained scale.

10. The petitioners state that even untrained teachers appointed subsequent to 1994 would be entitled to Matric Trained scale with effect from 1.10.2003 in view of resolution of Human Resources Department dated 29.7.2011 contained in Annexure-6 and letter dated 10.2.2012 of Principal Secretary, Education Department.

11. As per resolution dated 29.7.2011 of the Government, even untrained teachers possessing higher qualification would be entitled to Matric trained scale with effect from 1.10.2003 provided they pass the training examination in 1st attempt and those passing in second attempt from the date of appearing in the examination (which would be of a date later than 1.10.2003), as one time relaxation of the Rules, 1991.

12. The Principal Secretary, Education Department in his letter dated 10.2.2012 clarifying the resolution dated 29.7.2011 stated that it would not only benefit the appointees of 1994, but also compassionate appointees of 1999 and 2000 for

favour of Matric Trained scale with effect from 1.10.2003.

13. The State Counsel submits that the ratio decided in case of Chandra Kant (supra) would not be applicable to the appointments made subsequent to 1994 in view of paragraph 30 of the judgment subsequently modified vide order dated 8.8.2012 passed in M.J.C. No. 4075 of 2011 and also in view of decision of this Court in case of Rahul Kumar and Others Vs. The State of Bihar and Others, , which clarified the ratio and the extent of applicability of Chandra Kant case (supra). Learned counsel submits that the Government resolution dated 29.7.2011 contained in Annexure-6 was issued in background of facts of appellants of Chandra Kant (supra) and the connected batch appeals, because of the hardship they faced over the years and thus would not be appointees of subsequent years.

14. Furthermore Matric trained scale cannot be extended to untrained teachers appointed in 1999 and 2000, as the benefits were meant for teachers, who were similarly placed vis-?-vis appellants of Chandra Kant case. The others, who are not similarly placed would be governed by Bihar Elementary Teachers Rules, 1991 particularly Rule 11, (hereinafter referred to as the Rule, 1991). As per Rule 11 an Assistant Teachers, who at the time of appointment did not have training certificate would be entitled to Matric trained scale only from the date they passed the examination and that too in maximum of two attempts.

15. I have heard the learned counsel for the petitioners and the State. The adjudication of the issues in these batch of writ applications would require noticing the relevant provisions of law as well as Chandra Kant case (supra) in some details.

16. One would recall that prior to 1991, the appointment of Elementary Teachers were made on basis of circulars and instructions issued by the Government from time to time and no statutory rules in this regard were in existence. It was eventually pursuant to the direction of this Court, that Bihar Elementary Teachers Appointment Rules were framed under Article 309 of the Constitution. As respondents did not get sufficient number of trained teachers in female categories and some Arts Subjects, the rigours of eligibility were waived and even untrained teachers got appointed from time to time. The Government was faced with the arduous task of fixing pay scale. One of the issues was whether all untrained would be entitled to matric trained scale or only untrained teachers having higher qualification would be entitled to matric trained scale or none of the untrained teachers would get matric trained scale. This necessitated the Government to constitute a Fitment Committee in the year 1989 to make necessary recommendations. The Fitment Committee placed the Assistant Teachers in two categories of pay scales; (i) matric trained scale, and (ii) matric untrained scale. The teachers, who were matric trained, intermediate untrained and graduate untrained teachers were recommended to get matric trained scale, whereas the teachers, who were simple matriculate and did not possess any training certificate, were alone placed in Matric untrained scale. Round about the

same period, the Governor of Bihar framed Bihar Elementary Teachers Rules, 1991 under Article 309 of the Constitution.

17. Rule, 1991 provided for appointment of both trained and untrained teachers. Rule 11 stated that only trained teachers would get Matric trained scale and untrained teachers, irrespective of their qualifications would be placed in Matric untrained scale. The Rules favoured a written examination and on the basis of marks secured, a seniority list was to be prepared under Rule 10 in the light of Rules for reservation. Rule 11 provided for filling up the vacancies from the select list and to appoint a trained candidate in matric trained scale and matric untrained teacher in matric untrained scale. Rule 11, which would be relevant in the context is quoted hereinbelow:--

18. Rule 11 of the Rules is quoted hereinbelow for easy reference:--

19. It would appear from bare perusal of Rule 11 that trained candidates were to be appointed in matric trained scale and the matric untrained teacher in matric untrained scale. Rule 11(2) stipulates that an untrained teacher is to be appointed only on the condition that he would take training course forthwith and would appear in the ensuing training examination which has to be passed in maximum of two attempts, failing which, one would forfeit his job. As per Clause 11(gha), an untrained teacher would be entitled to matric trained scale only after passing of training examination.

20. Though 1991 Rules did not favour grant of matric trained scale to untrained teachers till they pass the training examinations, but on account of general and pressing demand, the trained scale got implemented in respect of untrained appointees of the year 1994. The strikes and the prevailing situations pushed the Government to arrive at an agreement with Associations of employees on account of which the distinction between the trained and untrained teachers under 1991 Rules and those appointed in 1994 pursuant to 1991 Rules, became almost non-existent. As a result, almost all appointed in 1994 got Matric trained scale on account of having higher qualification of I.A. and B.A. in spite of despite being untrained.

21. Disputes again resurfaced, when the State Government employees raised a demand for grant of Central Pay scale, which led to formation of another Fitment Committee in January 1998 to resolve the controversy. The 2nd Fitment Committee in its report dated 8.2.1999 recommended Matric trained scale to teachers who had passed training examination and Matric untrained scale to all untrained teachers, irrespective of higher qualification.

22. The report of the 2nd Fitment Committee as apprehended in some quarters, was not well received by the employees. It led to unrest forcing the Government to agree to grant Matric trained scale to untrained teachers having higher qualification with certain conditions. On 25.6.1999, the Finance Department, Government of Bihar issued a circular stating that untrained teachers having higher qualification, who have completed one year training by 1.1.1996 would

get Matric trained scale. The impugned circular was successfully challenged in this Court. The issue of pay scale seemed to get embroiled in never ending controversy and was posed a serious concern to the Government, which eventually constituted this time a Fitment Appellate Committee to look into the matter. The Fitment Appellate Committee submitted its report on 15.1.2000. The Appellate Committee favoured trained scale to trained teachers as well as to those possessing graduate degree. The matric untrained and I.A. simpliciter were placed in matric untrained scale.

23. The Government vide its resolution dated 16.1.2000, adopted the Second Fitment Committee report dated 8.2.1999 which recommended untrained scale to all untrained teachers irrespective of their qualifications in preference to Fitment Appellate Committee report submitted in January, 2010. The resolution of the Government was followed by another Executive order dated 16.1.2001 by which the higher scale paid to the untrained teachers were directed to be recovered in 20 equal installments.

24. The Executive order dated 16.1.2011 was challenged in writ applications by the teachers, who were applicants in case of Chandra Kant (supra) (L.P.A. No. 412 of 2003) and analogous batch of appeals numbering 89 in total. The learned single Judge vide his order dated 14.9.2001 disposed of the writ applications with a direction to the State Government to issue necessary notification to implement the recommendations of Fitment Appellate Committee (For brevity F.A.C.) in case of Elementary School Teachers. In other words besides trained teachers, even the untrained teachers having higher qualification of graduation were to get matric trained scale, whereas matric untrained and I.A. untrained would get the matric untrained scale. The order dated 14.9.2001 was challenged in Letters Patent Appeal by Prathmik Adhyapak Sangh and some Intermediate Teachers which was allowed not on merit but only on the principle of bias, because the learned Single Judge, who heard the writ applications with consent of the parties had also dealt with the matter as Chairman of FAC. The said judgment is reported in Prathmik Adhyapak Sangh and Others Vs. The State of Bihar and Others . The writ applications were directed to be heard afresh by another Bench which dismissed the same, which eventually led to filing of L.P.A. No. 412 of 2003 and 89 other appeals. In paragraph 10 of the said judgment, the L.P.A. Bench noticed that the decision of the State Government to appoint even untrained teachers was challenged unsuccessfully in the Hon''ble Apex Court in SLP No. 23187 of 1997 disposed of on 5.9.1997, reported in Ram Vijay Kumar and Others Vs. State of Bihar and Others, .

25. The Hon''ble Apex Court while not interfering with the impugned decision of the State Government to appoint untrained teachers directed to take required steps for training of untrained teachers so that they get a chance of becoming duly trained within two years. Pursuant to the direction of the Hon''ble Apex Court, majority of the untrained teachers obtained training while in service, but no examination was held till May 2004, the result of which was published on 20th

June, 2005. It is relevant to state that the teachers, who were successful in training examination, were subsequently allowed Matric trained scale.

26. The dispute in Chandra Kant case as observed by Division Bench was mainly for the earlier period during which on account of different orders of the Court, the writ petitioners claimed to have received their pay in that scale till 30.9.2003 and further to formalize to extend the scale till passing of training examination in June, 2005.

27. We thus find that the issue that arose for consideration before Division Bench was whether the appellants would be entitled for Matric trained scale for the earlier period, which they received till 30.9.2003 on account of Court's orders and agreements. The other issue was whether grant of Matric trained scale prior to passing of training examination would be in the teeth of provisions in Bihar Elementary Teachers Appointment Rules, 2011 (sic--1991?) framed under Article 309 of the Constitution.

28. The Division Bench in seisin of Chandra Kant (supra) noticed that in view of agreement between the State and the employees and on account of different orders of this Court, the untrained teachers continued to get Matric trained scale despite prohibition contained in Rule 11, up-till 2003. The Division Bench in paragraph 30 thereof noticed that due to inability of the State Government to hold training, the appellants, who were successful in 2004 examination, result of which was published on 20.6.2005 have suffered undue hardship. Furthermore, there was a direction of the Hon'ble Apex Court to provide training "in service" within two years and take required examination. The Division Bench, as such felt that the State Government as a one time measure should relax Rule 11 of 1991 Rules to grant Matric trained scale to the teachers, who have passed in-service training in June, 2005 from any date that which may be found suitable or" from 1.10.2003 when actual payment in Matric trained scale was stopped.

29. It is relevant to state here that the date of order dated 1.10.2003 passed in L.P.A. No. 412 of 2003 was modified vide order dated 8.8.2012 passed in M.J.C. No. 4075 of 2011, as Matric trained scale was not stopped in case of all the teachers from 1.10.2003. This date varied from teachers to teachers. The Division Bench, thus directed the Government to give matric trained scale from any suitable date that may not adversely affect the seniority of other teachers. The relevant extract of order dated 8.8.2012 is once again quoted at the alter of repetition for ready reference:--

6. From a perusal of paragraph 30 of the judgment extracted above, it is evident that this Court has not applied its mind as to what would be reasonable and appropriate date for grant of Matric trained scale to such teachers as the petitioners. In view of aforesaid facts, particularly when it is not in dispute that actual payment of Matric trained scale was stopped from different dates and not from 1.10.2003, the illustration that the date may be fixed even from 1.10.2003, which was only by way of simple observation, is modified. That observation may

be treated to have been deleted and instead the State Government shall apply its mind with reference to all the relevant facts and fix the date for grant of Matric trained scale to the concerned teachers on the basis of other observations keeping in mind that no adverse effect is caused upon seniority of the concerned teachers by fixing of the date for grant of Matric trained scale.

30. The other issue for consideration before the Division Bench was that in any event, whether the Government is entitled to make recovery of excess amount paid by way of higher salary in matric trained scale. The Division Bench noticed that the appellant got matric trained scale on account of different orders of this Court as well as agreement arrived between the parties and there was no allegation of misrepresentation against the appellants nor any complaint of playing any deceit.

31. The Division Bench in terms of ratio decided in case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , restrained the respondents from making any recovery of excess amount by way of payment of higher salary.

32. In the backdrop of the aforesaid-provisions of law and decision of the Division Bench, we will now consider the case of the petitioners most of whom were appointed on compassionate ground between 1988 to 2003.

33. The petitioners particularly those who were appointed subsequent to 1994 pray for grant of Matric Trained scale with effect from 1.10.2003. For grant of the said reliefs they have relied upon resolution of the Human Resources Department dated 29.7.2011 as well as letter dated 10.2.2012 issued by the Principal Secretary, Education Department in clarification of letter dated 29.7.2011. They also state that the ratio decided in case of Chandra Kant (supra) would equally apply to their cases.

34. First of all, I would refer to resolution dated 29.7.2011 (Annexure-6), and then to 10.2.2012 (Annexure-8), on which the petitioners have heavily relied. The resolution dated 29.7.2011 was issued in background of; direction of the Division Bench of this Court in L.P.A. No. 412 of 2003 dated 23.9.2010. The resolution stated in clear terms that 1991, Rules provide for appointment of both trained and untrained teachers. The trained teachers as per Rules would get Matric trained scale, whereas untrained teachers would get Matric untrained scale and only on passing of training examination they would get Matric trained scale. Clause-I of the resolution stated that Director, Primary Education vide letter No. 998 dated 7.6.1995 approved grant of trained scale of Rs. 1200-2040 to even untrained teachers having higher qualification. On 1.1.1996, the pay scale of State employees was revised. The Finance Department vide its Resolution No. 660(B)(ii) dated 6.2.1999 approved the scale of Rs. 4500-7000 with effect from 1.1.1996 to trained teachers also, and pay scale of Rs. 3050-4590 was approved for untrained teachers. Again in view of agreement with the teachers, the untrained teachers having higher qualifications were granted scale of Rs. 4500-7000 with the condition that they have completed their training within a



year.

35. Clause-II of the letter states that in view of decision dated 17.5.2010 in C.W.J.C. No. 7103 of 2009, the pay scale of Matric untrained teachers were lowered to Rs. 3050-4590 with effect from 1.1.1996. The excess amount paid was directed to be recovered. Sub-clause (ka) of Clause-II states that the L.P.A. Bench vide its order dated 23.9.2010 passed in LPA No. 412 of 2003 directed that if untrained teachers having higher qualification, passed the training examination in first attempt they will be entitled to Matric trained scale with effect from 1.10.2003. Furthermore, as per the Clause, if such untrained teachers, who pass the training examination in second attempt, would get Matric trained scale from the date they appeared in the examination held after 1.10.2003, as a one time measure.

36. Thus the resolution in no manner indicate that even appointees post 1994 would also get Matric trained scale with effect from 1.10.2003, though they will pass training examination in 2005 or even later.

37. The letter dated 10.2.2012 of Principal Secretary, Education Department was issued by way of clarification to the Government order dated 29.7.2011 in view of queries made by District Superintendent of Education. The letter stated that decisions of Chandra Kant case would not only benefit appointees of 1994, but also untrained appointees of 1999-2000. It is this clause, on which the petitioners have heavily relied. If the contention of the petitioners is to be accepted, then even appointees of 1999-2000 would get matric trained scale w.e.f. 1.10.2003, irrespective of passing the training examination in 1st attempt in 2005 or 2010 or even 2012, which was not the intent of the decision and directions in Chandra Kant case.

38. In my view, the Principal Secretary, Education Department misdirected himself in construing the directions in Chandra Kant case as well as resolution dated 29.7.2011. The resolution of the Government dated 29.7.2011 contained in Clause 2(ka) was with respect to appellants of Chandra Kant case and batch of appeals of 2003 heard analogous. In fact the resolution of the Government stated that vide letter No. 998 dated 7.6.1995 Matric Trained Scale was approved in case of untrained teachers having higher qualification. A revised pay was made effective from 1.1.1996 approving Rs. 4500-7000 for trained teachers and Rs. 3050-4590 for untrained teachers. Subsequently, the scale of untrained teachers having higher qualification was enhanced to Rs. 4500-7000, vide Finance Department Resolution dated 6.2.1999 which scale was again withdrawn in the year 2000 and 2001 in view of the decision in case of Vinay Kumar vs. State of Bihar & Ors. (C.W.J.C. No. 7103 of 2009). However, in view of Courts interim orders, the untrained teachers continued to get the trained scale.

39. It would appear from resolution dated 29.7.2011 that it was issued in background of Chandra Kant case and all similarly situated as a one time measure. However, the Principal Secretary vide his letter dated 10.2.2010

(sic--2012?) enlarged the benefits to cover the cases of teachers who were appointed much later in the year 1999 and 2000. The Division Bench observed that the appellants therein had suffered hardship all these years since their appointment in 1994, and in fact received matric trained scale up to 2003, till it was stopped. In such circumstances, the Division Bench observed that if these appellants pass training examination in first attempt or even in second attempt they be given matric trained scale from 1.10.2003 as a one time relaxation of Rule 11 of Rules, 1991 which envisages grant of matric trained scale to untrained teachers only from the dates they pass the training examinations.

40. The letter of Principal Secretary is not only in the teeth of Rule 11 of 2011 Rules but also not in consonance with the direction of Division Bench. The benefit of Division Bench order was to accrue to appellants of Chandra Kant case and at the most to other similarly situated and not to appointees of 1999 and 2000 or of later year.

41. It is difficult to perceive that untrained teachers appointed in 1999-2000 would get matric trained scale w.e.f. 1.10.2003 even though they pass training examination in 2005 or 2010, though Rule 11 mandate such scale would be admissible only from date of passing of the examination. The view of mine finds support from judgment of this Court in similar circumstances in the case of Rahul Kumar and Others Vs. The State of Bihar and Others, . In the said case the applicant was appointed in 2001, training completed in 2009, still on basis of executive order dated 29.7.2011 (Annexure-6) and 10.2.2012 (Annexure-8), he claimed matric trained scale w.e.f. 1.10.2013. Negating the claim of the petitioners mainly on the ground that resolution of the Government dated 29.7.2011 would confine only to appellant of Chandra Kant case and batch of cases appointed in 1994, the learned Judge observed as follows: The relevant extract of judgment is quoted hereinbelow:--

Reliance by the petitioners on the orders dated 29.7.2011 and 10.2.2012 appears misconceived. They are administrative orders. They have to remain subservient to Rule 11. Additionally they have been issued in the background of the facts in Chandra Kant (supra). An administrative order cannot be interpreted and read in a manner to include into it something more which is not to be found in the judicial order from which it emanated. It has already been discussed that the facts in Chandra Kant (supra) are factually different from the present case. In para 26 of Chandra Kant (supra) it has been noticed that it was causing hardship and therefore there was a need to take decision as a one time measure. The Court is satisfied the aforesaid observation is sufficient to hold that the petitioners cannot rely upon it as a precedent also.

42. Thus there is no indication in the judgment of Division Bench to infer that the benefits of one time relaxation of Rule was to be extended to appointees of 1999-2000 so as to confer them matric trained scale w.e.f. 1.10.2003 even if they pass the training examinations much subsequent to it. It is relevant to state that appellants of Chandra Kant and analogous batch of appeals were appointed

in 1994. They struggled to get trained scale, which Government acceded by making an agreement with the employees twice between 1994 and 1999 itself. Some of them even moved Hon"ble Apex Court with a grievance that they were denied opportunity of getting higher scale as no training was provided, much less, taking of examination. The Apex Court in SLP No. 23187/97 disposed of on 5.9.1997 directed that training be granted within two years. At the relevant time, the appointees of 1999-2000 were not even recruited. Furthermore, the appointees of 1994 moved this Court as back as in 2011 itself and the matter was finally settled in 2010 vide Chandra Kant case. In such circumstance, the Division Bench noticing the hardship, allowed one time relaxation of provision of Rule 11. As observed by learned Single Judge, the judgment ought not to be inferred to include reliefs or benefits, it did not intend to confer to latter appointees of 1999 to 2000.

43. In the backdrop of the aforesaid discussions now I would take up the respective cases for consideration category-wise vis-?-vis year of the appointments:--

C.W.J.C. No. 14696 of 2012, C.W.J.C. No. 14739 of 2012, C.W.J.C. No. 14692 of 2012, and C.W.J.C. No. 14675 of 2012.

44. All these four applications are taken up together for consideration as they are appointees of the year 1994 and even prior to it. To be specific, the two petitioners of C.W.J.C. No. 14696 of 2012 and sole petitioner of C.W.J.C. 14739 of 2012 were appointees in the year 1988. The sole petitioner of C.W.J.C. No. 14675 of 2012 and petitioners of C.W.J.C. No. 14692 of 2012 are appointees of the year 1994 like the appellants of Chandra Kant case. The case of petitioners of C.W.J.C. No. 14696 of 2012 and C.W.J.C. No. 14739 of 2012 is even better than that of the appointees of 1994, as they have faced undue hardship for a much longer period. They had to wait for 15 years to get their trainings. All these petitioners have passed their training examinations within two attempts, as such they would be entitled to benefits accruing from the order of Division Bench in Chandra Kant case (supra), which would be fully applicable in their cases. Furthermore, they would be entitled to get Matric Trained scale with effect from 1.10.2003 in terms of Government Resolution dated 29.7.2011, issued in the background of Chandra Kant case.

C.W.J.C. No. 13734 of 2012, C.W.J.C. No. 14652 of 2012 and C.W.J.C. No. 19628 of 2012

45. All these cases are taken up together, as they can be bracketed in one category in view of date of appointment. All the 31 petitioners of C.W.J.C. No. 13734 of 2012 were appointed between 1999 to 2003. Similarly all the 39 petitioners of C.W.J.C. No. 14652 of 2012 were appointed between 1999 to 2005 and the six petitioners of C.W.J.C. No. 19628 of 2003 were appointed between 2002 to 2003.

46. We have already discussed in the aforesaid paragraph that the Division

Bench of this Court in Chandra Kant case (supra) relaxed Rule 11 in favour of appointees of 1994 as they faced hardship all these years on account of none commissioning of training, which was held only in the year 2003-2004. The negotiations between the Government and the association of untrained teachers took place between 1994 to 1999 on account of which the former agreed to grant trained scale to even untrained teachers having higher qualifications. However, the Government on 16.1.2001 decided to withdraw the higher scale as well as recovery of excess amount paid as Rule 11 did not provide trained scale to untrained teachers. In such circumstances the Division Bench noticed that the appellants, who waged legal battle right from 2000 to 2001, on account of interim orders and on account of agreement between the Government, continued to get Matric trained scale till 2003. In such circumstances, the Division Bench granted one time relaxation of Rule 11 and observed that if the appellants passed the training examination in 1st or 2nd attempt they would get trained scale with effect from 1.10.2003. It is relevant to state that the trained scale was stopped to the appointees of 1994 in the year 2003 till they passed the training examination, which was in June, 2005. In such circumstances, the Division Bench directed one time relaxation of Rule 11 to avoid hardship to the appellants, who were appointees of 1994 observing that they would be entitled to Matric trained scale with effect from 1.10.2003 and not from the date of passing of the examination in the year 2005.

47. The petitioners of these writ applications were appointed in between 1999 to 2005 and as such the relaxation allowed by the Division Bench would not be applicable in their cases. In other words, these petitioners would be entitled to Matric trained scale from the date they cleared the examination in 1st attempt or from the date of appearing in the examination, if they have cleared it in maximum of two attempts, whichever to be held after 1.10.2003. Thus, the prayer of these petitioners to grant Matric trained scale from 1.10.2003 was rejected.

48. The petitioner Nos. 1 and 3 of C.W.J.C. No. 14678 of 2012 were appointed in the year 1999 whereas the petitioner No. 2 Umesh Manjhi was appointed in the year 1994. The reasons recorded in earlier two cases would equally govern the case of these petitioners. So far as petitioner No. 2 is concerned, he is an appointee of the year 1994 and as such his case would be similar to the appellants of Chandra Kant case (supra), who too were appointees of 1994. In this view of the matter, the ratio decided and directions issued in Chandra Kant case (supra) would fully apply to petitioner No. 2 of C.W.J.C. No. 14678 of 2012. The relief sought by petitioner No. 2 is thus allowed and he would be entitled to Matric trained scale with effect from 1.10.2003, in case he passed the training examination as per the resolution dated 29.7.2011 of the State Government (Annexure-6). The relief sought for by the petitioner Nos. 1 and 3, who were appointees of 1999 are rejected, as the decision in Chandra Kant case (supra) would not cover their cases for the reasons already discussed in foregoing paragraphs.

49. The sole petitioner of C.W.J.C. No. 14664 of 2012 is appointee of the year 1998, as such his case would not fall within the purview of the decisions rendered in Chandra Kant case (supra) and as such the prayer for grant of Matric trained scale with effect from 1.10.2003 too is declined for similar reasons as given in case of appointees of 1999 and onwards. As such, as per resolution dated 29.7.2011, he would get Matric trained scale from the date he passed the training examination in 1st attempt or from the date of appearing in the examination, if he passed the same in 2nd attempt.

50. The Government by the impugned orders have decided to recover the excess amount paid to the petitioners of C.W.J.C. Nos. 14696 of 2012, 14739 of 2012, 14675 of 2012, 14692 of 2012, 14664 of 2012 and petitioner No. 2 of C.W.J.C. No. 14678 of 2012 in trained scale prior to 1.10.2003. Except for sole petitioner of C.W.J.C. No. 14664 of 2012, all the other petitioners from whom excess amount is being sought to be recovered, are either appointees of 1994 or even of a prior period. In such circumstances, the case of all these petitioners stand on similar footing as the case of appellants of Chandra Kant case (supra). The Division Bench in Chandra Kant case (supra) noticed that the appellant got matric trained scale on account of different orders of this Court as well as agreement arrived between the parties and there was no allegation of misrepresentation against the appellants nor any complaint of playing any deceit.

51. The Division Bench in terms of ratio decided in case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, , restrained the respondents from making any recovery of excess amount by way of payment of higher salary.

52. Similarly, these petitioners too got Matric trained scale on account of different orders of this Court as well as agreement between the employees and the Government. No misrepresentation has been alleged against these petitioners. As such, I quash the impugned orders issued by the respondents which seek to recover excess amount paid to these petitioners prior to the year, 2003. The excess amount already recovered would be paid to the petitioners or accordingly would be adjusted.

53. The sole petitioner appointed in 1998 also for similar reason got Matric trained scale prior to 2003. Again no misrepresentation has been alleged against him and as such the impugned order directing recovery of the excess amount paid prior to 1.10.2003 is too quashed. The writ applications are accordingly disposed of in terms of the aforesaid observations.