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**(2009) 07 JH CK 0126**  
**In the Jharkhand High Court**

Madan Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 24-07-2009

**Acts Referred:**

Constitution of India, 1950 — Article 309

**Citation :** (2009) 07 JH CK 0126

**Hon'ble Judges :** Dabbiru Ganeshrao Patnaik, J

**Bench :** Single Bench

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## Judgement

D.G.R. Patnaik, J.—Heard Mr. P.P.N. Roy, learned Counsel for the petitioner and Mr. Rajesh Shanka, learned Counsel for the Respondent-State.

2. Petitioner, in this writ application, has prayed for a direction to the Respondents to fix his seniority from the initial date of his appointment instead of the date when he completed his Training and also to grant promotion to the petitioner on the basis of the seniority fixed in accordance with his initial date of appointment. Further prayer has also been made to direct the Respondents to grant the Graduation scale to the petitioner from 24.06.1992 i.e. the date on which he became eligible for the said scale.

3. The petitioner's case in brief is as follows:

Petitioner was appointed as Assistant Teacher on 09.08.1982 and was posted at Basic School, Panki, Palamau.

Since 1995, the petitioner had been working as In-charge Headmaster in the aforesaid Basic School.

On 25.06.2003, a provisional seniority list (Annexure-1) was prepared and notified by the Director, Primary Education, Government of Jharkhand wherein the petitioner's name has been mentioned at Serial No. 84 and an explanatory letter was issued by the Office of the Director, Primary Education Directorate, Jharkhand stating that the seniority has been fixed on the basis of the date of

Training (Annexure-1).

Being aggrieved by the denial of his seniority from the date of his appointment and denial of graduation scale from 24.06.1992, the petitioner had filed his representation before the Secretary, Primary Education, Human Resource Development Department, Jharkhand, Ranchi but the same has not been answered.

4. Explaining the grievance of the petitioner, and the grounds in support of the reliefs claimed, Mr. P.P.N. Roy, learned senior counsel for the petitioner would explain by reference to Annexure-3, which is a Notification issued by the State Government in the Human Resource Development Department on 03.12.2002, that pursuant to an earlier order passed in the writ application vide C.W.J.C. No. 1872 of 1998 (R) by the Patna High Court, in the case of Shyam Sundar Mahato and Ors. v. State of Bihar and Ors. the State Government vide the aforesaid Notification had (declared that those teachers, who were appointed in the Government Basic Schools in between 11.08.1981 to 17.08.1988 shall be deemed to be the teachers of the Divisional cadre and their seniority would be determined from the date of their appointment. Learned Counsel submits that the Respondent-State Government is bound by the aforesaid Notification and it cannot deny the seniority to the petitioner from the date of his initial appointment.

Learned Counsel submits further that the petitioner has obtained his Graduation on 24.06.1992 and despite submission of the Graduation Certificate, he has not been given the Graduation scale. The petitioner had ultimately retired from service in the month of October, 2008.

5. Counter affidavit has been filed on behalf of the Respondent-State.

Mr. Rajesh Shankar, learned Counsel for the Respondent-State, would submit that the petitioner's claim appears to be totally misconceived and even if the petitioner's demand for computing his seniority from the date of his appointment is considered, then such seniority would be confined only to the initial grade in which he was appointed and not in the higher grade.

Referring to a Notification dated 08th July, 1993, issued by the State Government in the Department of the Human Resource Development, learned Counsel explains that the Notification, issued by the State Government in exercise of its powers under Article 309 of the Constitution of India and consequent upon the implementation of the Central pay-scales with effect from 01st January, 1986, lays down the Rules for promotion of the Teachers of the Elementary Schools taken over by the Government. Learned Counsel explains that the Rules lay down different grades for teachers on different pay-scales. The grades beginning with Grade-I, which is applicable to Matric Trained Basic Scale, rises thereafter to the Grade II Matric Trained Senior scale, followed by Grade 3 Matric Trained Selection Scale and thereafter to Grade IV to the Trained Arts Graduate scale and furthermore to Grade V in the Trained Graduate Senior Scale

and so on.

Learned Counsel explains that admittedly, the petitioner at the time of his induction in service in the Basic School, was a non-matriculate and he continued to remain as such till 1992. After he obtained his matriculation certificate and had obtained his Training, the petitioner was placed at Grade I in 1992 and in due course he had earned the higher pay-scales in accordance with the stipulated Rules. Learned Counsel adds further, that every Grade has a different Gradation list in which the assessment of the seniority is confined to the teachers of that particular Grade. Since the petitioner had obtained his Matric Trained scale only in 1992, his seniority in the relevant Grade could be considered only after the date when he had entered the Matric Trained Basic Scale Grade. Learned Counsel submits that the petitioner's seniority has accordingly, been assessed in the Grade to which he belongs.

As regards the petitioner's claim for grant of Graduation pay-scale, learned Counsel for the Respondents submits that the petitioner's claim is being processed and as and when the final decision is taken on the same, the petitioner would be given the benefit of the Graduate scale.

6. Learned Counsel for the petitioner at this juncture, would submit that since the petitioner had already retired from service, he should be given the consequential monetary benefits on the basis of his promotion to the higher Grade as and when such promotion fell due to him.

7. Admittedly, the petitioner though inducted in service as a Teacher in the Government Basic School in the year 1982, was on that date, a non-matriculate. He obtained his matriculation certificate as well as Training only in 1992, whereafter he was placed in the corresponding Grade meant for Matric Trained Basic Scale. Thereafter, as and when he acquired his eligibility, he was given the higher pay-scales on the higher grades.

The provisional Gradation List appears to have been prepared in accordance with the different Grades to which the teachers belong. The petitioner's seniority appears to have been fixed in the provisional gradation list amongst the teachers of his own Grade.

8. The petitioner could certainly claim his position and seniority amongst his colleagues in his own Grade, and if this has not been denied to him, the petitioner cannot have any grievance over his placement in the provisional Gradation list.

Even otherwise, since by the Government notification, different grades of teachers have been fixed and the corresponding pay-scales have been prescribed for each grade, the petitioner could have been entitled for higher Grade and the corresponding higher pay-scale as and when he had acquired eligibility for such promotion.

As regards the petitioner's demand for the Graduate scale, such demand has not

been denied or disputed by the Respondents. However, the fact remains that the petitioner had acquired his eligibility for the Graduate scale way back on 24.06.1992 and having acknowledged this fact, the Respondents ought to have extended the benefit of Graduate scale to the petitioner from the date when the petitioner became eligible. No reason has been assigned by the Respondents as to why the Graduate scale was not given to the petitioner from the date when he had acquired the eligibility.

9. Considering the above facts and circumstances, this application is disposed of with a direction to the Respondents to decide upon the petitioner's claim for grant of Graduate scale from the date when he acquired the eligibility to such scale and if the petitioner's claim is not disputed, then, to assess the difference of salary on the basis of the corrected scale and pay the same alongwith interest @ 6 per cent per annum within three months from the date of receipt/production of a copy of this order and to pay him the arrears of salary on the Graduate scale. Furthermore, the Respondents shall also assess the retrial dues payable to the petitioner including pension, if payable, on the basis of the salary to which the petitioner would have been entitled on the corrected scale prior to the date of his retirement accordingly and pay the same to the petitioner within the three months' period as stipulated by this order.

10. Let a copy of this order be given to the learned Counsel for the Respondent-State.