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**(1989) 02 PAT CK 0040**

**In the Patna High Court**

**Case No : C.W.J.C. No's. 350 and 4054 of 1982**

Md. Ghulam Kibrya and another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision : 17-02-1989**

**Acts Referred:**

Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 —  
Section 4

**Citation : (1989) PLJR 982**

**Hon'ble Judges : S.B. Sinha, J**

**Bench : Single Bench**

**Advocate : Ganesh Prasad Singh and Mukteshwar Prasad Singh, for the Appellant; Indu Prabha Singh ft Mr. Abhay Singh, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S.B. Sinha, J.—These two writ applications involving common question of law, were taken up for hearing together with consent of the counsel for the parties and are being disposed of by this common judgment. In C.W.J.C. No. 3507 of 1982, the petitioner has prayed for issuance of an appropriate writ for quashing an order contained in Memo No. 7931-33 dated 26-8-1982 whereby and where under the petitioner's Scale of pay fixed earlier being the scale of I.Sc trained teachers was sought to be cancelled and the petitioner was put in the scale of pay of matric trained teacher and as contained In Annexure 4 to the writ petition as also the order in Memo No. 6690-6990 dated 2-8-1982 whereby and whereunder recovery of the amount was, sought to be directed with regard to the difference of amounts purported to have been withdrawn by the petitioner in excess of the aforementioned scale of pay and as contained in Annexure 3 to the writ petition.

2. The facts of the case lie in a very narrow compass.

3. The petitioner was appointed as an assistant teacher in an elementary school on 11-5-1969 with the qualification of Matric having science subject as optional

one. The petitioner, at the relevant time, appeared in the pre-university science examination the result whereof was later on published. In terms of scale of pay which was prevailing at that point of time the petitioner was given a fixed pay of untrained Matric i.e. Rs. 120/- per month with effect from 1-4-1968.

4. The petitioner thereafter passed B.Sc Part I examination which was equivalent to I.Sc in February, 1972 and thereafter was given the fixed pay of I.Sc untrained teacher i.e. Rs. 230/- per month. The aforementioned salary was later on enhanced.

5. According to the petitioner the scale of the trained Matric teacher prior to 1.1.1971 was Rs. 150/- to Rs. 250/- which was later on enhanced to Rs. 230/- to Rs. 340/- per month and from the year 1978 it became Rs. 240/- to Rs. 296/- per month. By reason of the Ordinance No. 62 of 1976 which came into force with effect from 3.2.1976 the school in question was taken over.

6. In terms of the said Ordinance a circular was issued on 15.12.1976 whereby and where-under it was directed that the initial appointment of the persons having qualification above trained matric i.e. trained I.A or trained B.A would also be made against the existing vacancy of trained matric.

7. From an office order dated 30th June, 1982 as contained in Annexure 1 to the writ petition it appears that the petitioner has passed the training examination on 15.4.1982 and as such the scale of pay of the petitioner on 1.4.1981 till 14.4.1982 was fixed in the scale of untrained Intermediate at Rs. 710/- and there after in the scale of pay of Rs. 730/- to Rs. 1080/-.

8. However by reason of the impugned order the aforementioned circular dated 15.12.1976 was sought to be enforced as against the petitioner and thus the concerned respondents have directed that the petitioner was entitled only to the scale of pay of Rs. 680/- to Rs 965 and not a higher scale.

9. Mr. Ganesh Prasad Singh, the learned senior counsel appearing" on behalf of the petitioner submitted that in view of the fact that as on the date of taking over of the said school the petitioner had been getting the salary of an untrained I.Sc. teacher, the question of treating him as fresh appointee purported to be in terms of the aforementioned circular dated 15.12.1976 does not arise in as much as the said circular will have a prospective operation and not a retrospective operation.

10. According to the learned counsel as the petitioner on the date of take over of the said school had already got a higher qualification, namely, he was having the qualification of an I.Sc. untrained teacher, the fixation of scale of pay of I.Sc trained teacher with effect from 15.4.1982 after his attaining the qualification of training in primary education was legal and thus the order as contained in Annexure to the writ petition could not have been recalled.

11. So far as in C.W.J.C. No 4054 of 1982 is concerned, the petitioner thereof was appointed on 31.3.1976 on the post of an untrained I.A. (Urdu) teacher. The

petitioner of this case was given the scale of pay of Rs. 230/- per month and thereafter he was sent for training meant for the teachers having Intermediate qualification in primary teachers Education College, Patahi in the district of Muzaffarpur. In this case also the petitioner was given the salary of untrained Intermediate teacher in the regular scale of pay of Rs. 680/- to Rs. 965/-per month with effect from 1.4.1981 and on this basis his pay was fixed at Rs. 710/- by an office order dated 15.2.1982 as contained in Annexure 2 to the writ petition.

12. In this case by reason of the impugned order as contained in Annexure 3 to the writ petition it has been directed that the petitioner's scale of pay should be fixed as payable to untrained matric teacher or trained middle teacher.

13. Mr. Ganesh Prasad Singh, the learned senior counsel appearing on behalf of the petitioner submitted that in view of the fact that as on the date of taking over of the said school the petitioner had been getting the salary of an untrained I.Sc. teacher, the question of treating his appointment as a fresh one purported to be in terms of the aforementioned circular dated 15.12.1976 does not arise inasmuch as the said circular will have a prospective operation and not a retrospective operation.

14. According to the learned counsel as the petitioner on the date of taking over of the said school had already got a higher qualification, namely, he was having the qualification of an untrained I.Sc. teacher the fixation of scale of pay of I.Sc. trained teacher with effect from 15.4.1982 after his attaining the qualification of training was not illegal and thus the order as contained in Annexure 3 to the writ petition could not have been recalled.

15. In terms of section 4 , sub-section (2) of the Bihar Non-Government Elementary Schools Taking over of Management and Control) Act 1976 the services of all such teachers are transferred to the State of Bihar on the same terms and conditions unless the same is altered in accordance with law.

16. As in both these cases the petitioners had been getting the salary of an untrained I.Sc teacher on the date of taking over of the said school, their salaries could not have been reduced pursuant to the said purported circular dated 15.12.1976.

17. From the impugned orders it does not appear that any reason whatsoever has been assigned as to under what circumstances the petitioner's salary was reduced. Further it also does not appear that prior to that the petitioners have been given an opportunity of hearing.

18. In this view of the matters, in my opinion, the impugned orders cannot be sustained. In the result these writ petitions are allowed and the impugned orders as contained in Annexures 3 and 4 to C.W.J.C. No. 3507/ 82 and the impugned order as contained in Annexure 3 to C.W.J.C. No. 4054/82 are hereby quashed. However, on the facts and in the circumstances of the case there will be no order

as to costs.