

**(2013) 02 JH CK 0032**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 702 of 2000 (R)**

Ram Chandra Jha

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Others

RESPONDENT

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**Date of Decision :** 21-02-2013

**Acts Referred:**

**Citation :** (2013) 2 JLJR 406

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Saurav Arun and Deepak Kr. Dubey, for the Appellant; Binoda Nand Tiwary, for the Respondent

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## Judgement

Aparesh Kumar Singh, J.—Heard the counsel for the parties. Petitioner is seeking the grant of B.A. Trained Scale from the date when he claims to have acquired the said qualification in the year 1976. The petitioner has, however, been granted B.A. Trained Scale w.e.f. 1.1.1987 vide order dated 10.8.1998. He has also claimed the arrears of salary pursuant to the said grant of scale. Petitioner has also claimed for grant of the post of Head Master as per his seniority as he was discharging the duty of acting Head Master.

2. The writ petition has been filed in the year 2000 and it is stated that the petitioner has retired on 31.1.2012. The chronology of facts in the present case are long but in order to cut short the controversy, the relevant facts which are important for consideration of the petitioner's case are as follows. In the year 1968 petitioner passed his matriculation and subsequently, completed 2 years teachers training in 1969-71. He is said to have passed the intermediate science examination in the year 1972 and obtained his B.A. Degree in the year 1975. According to him, he was appointed as a Assistant Teacher in metric scale on 1.7.1972. He was granted I.A. Trained status in March, 1973, however he was not being granted the I.A. Trained Scale. Being aggrieved, he preferred writ petition being C.W.J.C. No. 297 of 1976(R) claiming particular scale, which was disposed of by directing the respondents to consider his representation for the

aforesaid grievances. His representation was rejected in May, 1980 against which he preferred another writ petition being C.W.J.C. No. 235 of 1981(R) which was decided on 7.7.1987 by quashing the order of rejection and directing the Director, Primary Education, Government of Bihar to decide the case of the petitioner. The petitioner had also made a claim of seniority viz-a-viz one private respondent being respondent no. 5 in the said case and while disposing of the writ petition, the Director, Primary Education was directed to decide the claim of the petitioner after giving opportunity of hearing to him. On 22.8.1988 the petitioner's claim was rejected vide Annexure-8 by observing that his case would be considered as and when the cases of other persons will be considered. However, petitioner again preferred C.W.J.C. No. 1050 of 1989(R) being aggrieved by non-grant of I.A. Trained Scale as also prayer to declare the petitioner as senior to respondent no. 5. The said writ petition was partly allowed vide order dated 11.9.1997 directing the respondents to grant I.A. Trained Scale to petitioner from 2.3.1973. The petitioner has, thereafter, been granted I.A. Trained Scale from the said date vide order dated 24.4.1998. Subsequently, by the order dated 10.8.1998, petitioner has been granted B.A. Trained Scale w.e.f. 1.1.1987 only against his claim from the date he acquired his qualification in the year 1975/1976 and also taking into account the seniority in the I.A. Trained Scale. The observation of the High Court in C.W.J.C. No. 235 of 1981 (R) have been quoted in the judgment rendered on 11.9.1997 in C.W.J.C. No. 1050 of 1989(R) and are of some consequence to consider the present controversy raised by the petitioner. Para 6 of the said judgment is quoted hereinbelow:--

Para 6:--From bare perusal of the judgment passed in C.W.J.C. No. 235/81(R), it is manifest that the claim of the petitioner for payment of I.A. trained scale was considered by this Court in detail and ultimately came to the following findings:--

In view of the fact that the petitioner was given the I.A. trained teacher scale of pay in the year 1973 there cannot be any justification nor Mrs. Pal appearing for the State could justify the necessity for such an order during the pendency of the writ petition, if any, by reason of Annexure-20. In that view of the matter, Annexure-20 is set aside. However, it may be mentioned that the petitioner cannot also claim the scale of pay admissible to B.A. trained teacher as a matter of right from 1976. The crucial date is the date of promotion to that scale of pay by the concerned authorities and not the date when the petitioner acquired the qualification, meaning thereby the date when he became a Graduate in the year 1976. It is now well settled that a teacher is entitled to a higher scale of pay only on the basis of vacancy and after consideration of his qualification and seniority along with other eligible candidates. As noticed above, the petitioner cannot be granted the said reliefs prayed for in this writ petition at this stage. However, the authorities concerned are directed to consider the case of the petitioner as to from which date the petitioner might have become eligible along with other eligible candidates to be considered for being given the scale of pay admissible to a B.A. trained teacher if it is held that he was legally given the trained scale in the year 1973.

3. Both petitioner as well as respondents have harped upon the same observation, which has been quoted, hereinabove. The respondents on their part have stated that the claim of B.A. trained scale made by the petitioner could not have been granted as a matter of right from the date when the petitioner acquired qualification i.e. became a graduate in the year 1976. They have also submitted that a teacher is entitled to higher pay scale only on the basis of vacancy and after consideration of his qualification, seniority along with other eligible candidates. In the counter affidavit the respondents have taken stand that before 1986 there was no vacancy in the said scale or to the post of Head Master in the said district for granting such benefit to the petitioner from anterior date 1.1.1987.

4. Petitioner has however, enclosed a chart (Annexure-14) signed by the District Education Officer, Dhanbad dated 27.9.1986 wherein a list of teachers have been shown who have been granted I.A. trained scale and B.A. trained scale from different dates. It is the contention of the petitioner that persons, similarly situated or even junior to him in terms of grant of I.A. trained scale have subsequently been granted B.A. trained scale by the respondent, District Education Officer, Dhanbad, which would be reflected in the last column of Annexure-14 showing different dates of 1975, 1978, 1984, 1981, 1982 in each individual cases. It is the contention of the petitioner that the statement made in para 24 of the writ petition, in support of which Annexure-14 has been relied upon by the petitioner has not been categorically controverted by the respondents in their reply in para 27 of their counter affidavit.

4A. It, therefore, becomes clear that the petitioner may not be right to claim a particular scale from the date when he acquired that qualification which it is to be reckoned and considered by the respondent-authorities on the basis of vacancy and after consideration of his qualification and seniority along with other eligible candidates. From Annexure-14 it appears that other persons have been granted B.A. trained scale, although some of them were granted I.A. trained scale after the petitioner.

5. In that view of the matter, in view of the grievance of the petitioner for grant of B.A. trained scale as claimed by him from anterior date on 1.1.1987, the petitioner is allowed liberty to file a representation for such claim within 4 weeks from today together with all the supporting facts and documents before the Director, Primary Education, Jharkhand. Petitioner may also raise his grievance in relation to the claim of scale off Head Master. On such representation being filed he shall consider the case of the petitioner in accordance with law upon verification of records and after getting satisfied that similarly placed persons have, been granted scale from earlier date and pass a reasoned and speaking order within a period of 16 weeks from the date of receipt of the said representation. Needless to say that if any consequential benefits are payable in the post retirement benefits and other arrear of salary, which will be depended upon the out come of the order passed by the Director, Primary Education,

Government of Jharkhand, the same shall be given within 4 weeks, thereafter.  
The writ petition is disposed of in the aforesaid terms.