

(2001) 09 PAT CK 0038
In the Patna High Court
Case No : C.W.J.C. No. 9050 of 2001

Shivashankar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Citation : (2001) 09 PAT CK 0038

Judgement

Aftab Alam, J.—This batch of writ petition once again bring to this Court the controversy regarding the entitlement to the matric trained scale of pay (currently of Rs. 4500-7000/-) of those elementary school teachers who do not possess a certificate in teachers' training course though some of them might be having a qualification much higher than matriculation. During the past decade this controversy, in one form or the other, has come to this Court recurrently. One can only hope that the order proposed to be passed in this batch of cases, after the matter at issue was debated comprehensively at the bar will finally resolve and settle the controversy.

2. In order to put the point at issue in proper perspective one may take note of certain basic facts which are not in dispute. On 5.3.1991 the State Government took the decision to take in untrained matriculates as primary school teachers and to send them for doing the teachers training course after entering into service, prior to that, for a long time the minimum qualification for appointment as an Assistant teacher for elementary school was matriculation plus the certificate of passing the basic teachers' training course which used to be of two years duration. Though the minimum qualification for appointment was "trained matriculate" (as the twin qualifications are commonly referred to), there has been for a very long time, two scales of pay admissible for the elementary school teachers; one the slightly higher matric trained scale and the other, the lower matric untrained scale. Two scales of pay for the same post may normally appear rather anomalous but the need for the two scales was rooted in the practical realities. Though formally and in principle the minimum qualification for appointment as Assistant teacher for elementary school was trained matriculate,

there were many instances of exemption from the requirement of training. The minimum qualification of a certificate of passing the basic teachers' training course was often relaxed depending upon the subjects of teaching, the gender of the candidates and the castes of the candidates. For example, in subjects like Urdu and Sanskrit, trained matriculates not being readily available exemptions were made and for these two subjects untrained matriculates were appointed on a regular basis subject to non-availability of trained matriculate candidates. Similar was the case in science for which appointments were made relaxing the requirement of training. Similar relaxations were allowed in case of lady candidates and candidates belonging to the scheduled castes and the scheduled tribes. In some instances similar relaxations were allowed to candidates seeking appointment under the scheme of compassionate appointments. As a result there was a substantial number of teachers in the elementary schools who did not possess the certificate of passing the basic teachers' training course. On the other hand, there were also a large number of teachers whose personal qualification was much higher than the minimum qualification of matriculation for appointment as Assistant teacher for elementary school; there were teachers whose personal qualifications were intermediate, graduation or even post graduation. The Government was, therefore, always faced with the question of categorization of the elementary school teachers for putting them in the appropriate scales of pay.

3. Before 1989 there were more than two scales of pay admissible to the Assistant teachers of elementary schools and teachers whose personal qualifications were graduation and above were given a pay scale even higher than the matric trained scale of pay.

4. The issue of categorization of elementary school teachers for granting them an appropriate scale of pay was last settled by the Government on 18.12.1989. Following the reports of the Fitment cum-Pay Revision Committee (F.P.R.C.) and the Anomaly Removal Committee the State Government in the Department of Finance issued resolution no. 3/PAR-01-3/89 6022 F (2), dated 18.12.1989. By this resolution all elementary school teachers who were matric trained/intermediate untrained graduation untrained were put together in the matric trained scale of pay of Rs. 1200-2040/- which on being revised had come into existence with effect from 1.1.1986. It was only the matric untrained teachers who were relegated to the lower scale of Rs. 975-1540/-, the revised matric untrained scale of pay coming into existence with effect from 1.1.1986.

5. The position formalized by the resolution, dated 18.12.1989 remained effective for some time and by letter, dated 7.6.1995 issued by the Director, Primary Education, it was clarified that in terms of the 1989 resolution, I.A. untrained and B.A. untrained teachers who were allowed matric trained scale of Rs. 1200-2040/- would continue to remain in the same scale even after acquiring the qualification of teachers' training and on acquiring the certificate of teachers' training, they would not be given a scale higher than the scale of Rs.

1200-2040/-. The position, thus, formally settled by the 1989 resolution continued till 31.12.1995 but it was badly disturbed with effect from 1.1.1996, the date on which the pay revision recommendations of the Fitment Committee were implemented by the State Government.

6. There are two factors primarily responsible for unsettling the position that was settled by the 1989 resolution. These can be stated as follows :

(i) The failure of the Government to take up the follow up measures in furtherance of its decision to appoint untrained matriculates as Assistant teachers and then to send them for in-service training; and

(ii) The highly unrealistic and impractical demand for pay revision made by the different Associations of Government employees which formed the basis for the terms of reference of the Fitment Committee.

I propose to take up the aforesaid two factors one by one.

7. The inclusion of the certificate of basic teachers' training course as minimum qualification for appointment as elementary school teachers had led to a mushroom growth of private teachers' training institutions. Some of these institutions truly operated from the institution. The unchecked and uncontrolled growth of such institutions had also brought to this Court a spate of litigations regarding the recognition, affiliation etc. of these so-called institutions and for permission for the students of those institutions to appear in the examinations held by the Bihar School Examination Board. The Government, taking note of the highly undesirable situation, issued resolution, dated 5.3.1991, by which the qualification of teachers' training was done away with for appointment as Assistant teacher for elementary school. It was further resolved that elementary school teachers would be appointed on merits and after appointments they would be sent for in-service teachers' training course. The resolution further stated that necessary amendments will be incorporated in the relevant rules.

8. It was a sensible decision but unfortunately the State Government failed to take the follow up measures in furtherance of this resolution and the failure of the Government over a period of ten years has greatly contributed to giving rise to this controversy.

9. Following the resolution, the Government framed rules called the Bihar Elementary School Appointment Rules, in exercise of the powers under Article 309 of the Constitution. These rules were issued under memo no. 2055 dated 30.9.1991 and were published in the Patna gazette, extra-ordinary Part No. 458, dated 1.10.1991.

10. Proceeding further in the matter, the Government made a requisition to the Bihar Public Service Commission on the basis of which the Commission issued an advertisement on 8.10.1991 for appointment of elementary school teachers in this State in large numbers. In that advertisement the certificate in teachers' training course was no longer mentioned as part of the minimum qualification

but it still found mention as a qualification of preference. On the basis of that advertisement approx. 19,000 elementary school teachers were appointed in the years, 1994-95. Further appointments have also been made on the basis of subsequent advertisement issued by the Commission and the total number of appointments as elementary school teachers after the issuance of the notification, dated 5.3.1991 is reported to be about 25,000. The teachers so appointed were also sent for the teachers' training course which was called "the one year in-service training".

11. It may be noted here that after their recruitment all those appointees who did not possess the teachers' training qualification were initially given the lower pay scale of matric untrained but by and by all those teachers were also given the matric trained scale of pay as provided in the 1989 resolution.

12. It is also note-worthy that when those teachers were sent for training, they were again put in the lower matric untrained scale for the period of training. At that stage, the matter came to this Court when some of the teachers challenged the action of the Government in putting them in the lower scale of pay for the period of training. This Court by orders passed in more than one cases up-held the contention of the teachers and struck down the decision of the State government to give the teachers the lower scale of matric untrained for the period of their one year in-service training. One such order is, dated 16.1.1999 passed in CWJC No. 1378/1998 (R) (Zila Prathmik Shikshak Sangh v. State of Bihar and Ors.). This order makes reference to other orders, including one passed by a division bench.

13. Another controversy arose when by order, dated 21.10.1996 issued by the Director, Primary Education, teachers appointed under the scheme of compassionate appointments were sought to be put in the lower matric untrained scale of pay. The resulting dispute came to this Court in CWJC No. 11508 of 1995 which was allowed by a bench of this Court by order, dated 9.2.1996. In that order it was found and held that regardless of the mode of recruitment, the teachers appointed even under the scheme of compassionate appointments were entitled to the same conditions of service and it was accordingly directed that those teachers should also be given the matric trained scale of pay.

14. It is indeed true that in sending the teachers for training their inter-seniority was not strictly followed and some irregularities have come to light in the order in which the teachers were sent for the one year in-service training but over the years the extent of irregularities is now considerably reduced. It was reported to the court by Mr. Sanjay Singh, Standing Counsel No. IX appearing for the State in all these cases that upto now about 79% of the teachers appointed after 1991 have completed their one year in-service training and only 21% of those teachers are still awaiting for being sent for the training. Mr. Singh also informed the court that out of the 21% teachers who still remain untrained, about 50% have the qualification of intermediate while the rest are either graduates or post graduates.

15. At this stage it is essential to take note of the failure of the State Government to arrange for holding the examination of those teachers who have completed their in-service training and as a result even those 79% of the teachers who have duly completed their training/course will find themselves in the category of untrained teachers. It may also be noted here that in this State the certificate examination for basic teachers training course was held for the last time in the year, 1991, that is to say, after the government resolution, dated 5.3.1991 no examination of the teachers training course has been held in this State. This is despite the positive directions of the Supreme Court in its order, dated 5.9.1997 in SLP No. 23187 of 1996, Ram Vijay Kumar and Others Vs. State of Bihar and Others, (para 5). Had the State Government made arrangements for holding the examination in furtherance of its resolution, dated 5.3.1991, a vast majority of the teachers appointed after 1991 would have passed the examination and would have, thus, become entitled to the matric trained scale of pay and, thus, the extent and magnitude of this controversy would have been greatly reduced.

16. The second factor contributing to this controversy, was the unrealistic and impractical demand of the State Government employees for central scales of pay with the same service conditions. The Fitment Committee that was constituted by a resolution of the Government of Bihar in the Department of Finance, dated 2.1.1998 was given a term of reference to recommend for State Government employees, the central scales of pay with the same service conditions as admissible to the Central Government employees. The demand of the employees and the term of reference given to the Fitment Committee has badly skewed the structure of pay of the government employees in this State. This aspect of the matter is discussed in detail in the report of the Fitment Committee and in Chapter I (Introduction) of the report of the Fitment Appellate Committee. There is, therefore, no need to go into that aspect of the matter in this order.

17. Suffice it to note, that while dealing with the issue of revised scales for the elementary school teachers the Fitment Committee observed that in the central schools the qualification in teachers' training was absolutely mandatory and there was no question of any one being appointed as teacher in a Central school without the requisite qualification in teachers' training. The Fitment Committee went on to observe that according to the conditions of service in the Central schools, all those elementary school teachers in this State who were untrained could not have been appointed in the first place. However, it was not possible to throw out a very large number of elementary school teachers in this State who were appointed by the State Government in a perfectly legal, valid and regular manner, though they did not have the qualification in teacher's training.

18. Faced with this situation, the Fitment Committee recommended for all those teachers who did not possess the teachers' training qualification a lower scale of pay regardless of their personal qualification being much higher than the minimum qualification of matriculation. The Fitment Committee basically kept all

untrained teachers below the matric trained scale for the reason that in the Centre there were no untrained teachers and, thus on the basis of "central equivalence" untrained teachers were kept at a lower level. The relevant passage from the report of the Fitment Committee is as follows:

12.3.5 : Matric untrained I.A. untrained and graduate untrained teachers would be in scales below the pay scale of matric trained; it must be remembered that students have to be taught by competent personnel and any compromise in this will not be in the interests of the State nor within the parameters of our terms of reference."

(emphasis added).

On receiving the report of the Fitment Committee, the Government of Bihar in its Department for Finance issued resolution, dated 8.2.1999 revising the pay scales of its employees (including the elementary school teachers), with effect from 1.1.1996, in the light of the recommendations made by the Fitment Committee. Para 2 of this resolution reads as follows:

In certain cases, the Fitment Committee have recommended enhanced educational/recruitment qualifications or prescribed other conditions. These have been accepted by the Government.

The Departments are directed to amend the relevant Rules within a period of six months. For the present, incumbents in some of the above cases who do not fulfil the newly prescribed qualifications, the Fitment Committee have recommended lower pay scales. Those have been approved and are shown in Schedule III. For cases, where the Fitment Committee have not indicated any lower pay scale, the existing incumbents, whether fulfilling the newly prescribed qualification or not, will draw their pay in the revised pay scale in accordance with the procedure laid down in the Resolution. However, those who do not fulfil the newly prescribed conditions would not be eligible for further promotion unless they obtain the requisite qualifications. In respect of a few recommendations of the Fitment Committee as regards the pay scales, it has been decided to review them in consultation with the Fitment Committee. Annexure V lists these cases.

Schedule III to which this para makes a reference showed the revised scales of pay of the teaching personnel of Government (Rajkiye) schools. The relevant extract from the schedule is as follows:

Teaching Personnel of Government (Rajkiya)

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19. Thus, it is to be seen that by virtue of Government resolution, dated 8.2.1999, issued in the light of the recommendations made by the Fitment Committee, the position formalized by the 1989 resolution was reversed. In terms of the resolution, dated 8.2.1999 only those elementary school teachers

who had the training qualification, were allowed the revised matric trained scale of Rs. 4500-7000/- and all those who did not possess the teachers' training qualification found themselves in the lower, matric untrained scale of pay regardless of their personal higher qualifications of graduation or even post-graduation.

20. It is not difficult to imagine that this would have caused wide-spread resentment among the elementary school teachers and it appears that negotiations were held between the Elementary "Teachers" Association and the Government in which certain understandings were arrived at between the parties. Following the meeting held with the Association on 21.3.1999, the Government issued a circular letter no. 3805, dated 25.6.1999 by which the earlier resolution, dated 8.2.1999 was modified to certain extent. In the circular, dated 25.6.1999 it was provided that all untrained teachers who had completed the one year in service training by 1.1.1996 but were unable to secure the certificate of passing the course because no examinations were held/no results were published would be provisionally allowed the higher matric trained scale of Rs. 4500-7000/-, subject to the condition of passing the next examination, failing which the government would be free to recover from them the differential amount paid on the basis of the higher scale of pay. It is significant to note that in this circular emphasis was on completing the teachers' training course, rather, than on the candidate's personal qualification(s) being higher than matriculation. The arrangement made under circular, dated 25.6.1999 should have mitigated the problem to a large extent but unfortunately the arrangement envisaged under this circular letter could not survive.

21. The aforesaid circular, dated 25.6.1999 came under challenge before this Court in CWJC No. 7103 of 1999 in which was filed by certain individual teachers who though having higher qualifications of intermediate, graduation and even post-graduation had not completed the one year in-service training and were, therefore, not covered by the circular, dated 25.6.1999. By order, dated 17.5.2000 passed in that writ petition, the circular, dated 25.6.1999 was set aside and the Respondent authorities were directed to reconsider the cases of untrained teachers who held higher qualifications of intermediate, graduation and post-graduation for being given the matric trained scale of pay. It is an order not in great detail and it appears that in that case the attention of the court was not drawn to many basic-facts, e.g., the recommendations of the Fitment Committee and the government resolution dated 8.2.1999 on the basis of which the scale of Rs. 4500-7000/- came into existence with effect from 1.1.1996.

22. According to the Respondent authorities, in pursuance of the order, dated 17.5.2000 passed in CWJC No. 7103 of 1999, the matter was once again reconsidered and this time the Government decided to revert back to its earlier resolution, dated 8.2.1999. In accordance with its decision, the Government of Bihar in the Department of Finance issued order, dated 16.1.2001 by which the recommendations of the Fitment Committee as adopted in the resolution, dated

P 2.1999 were restored and consequently an order was passed for recovery of the excess amount received by the teachers who did not possess the requisite qualification in teachers' training.

23. The writ petitions in this batch, and many more, have been filed challenging the order, dated 16.1.2001 by which the Respondent authorities have restored the position as in existence on the basis of the resolution, dated 8.2.1999 and further seek to make recovery of the differential amount paid to the untrained teachers on the circular letter dated 25.6.1999. In one or two cases in this batch, a further prayer, is made to command the State Government and other concerned agencies to hold the examination of the teachers training course which has not been held in this State after 1991, despite an order to that effect-passed by the Supreme Court.

24. Before proceeding any further, it will be necessary to take note of another collateral development on this issue. Report of the Fitment Committee had caused some grievance and resentment among different sections of the State government between the different employees associations and the state Government, the Government by its resolution No. 3/M 2.7.3/99-(Ansh) 229 V, dated 15.1.2001 constituted the Fitment Appellate Committee. As its name suggests the Appellate Committee was asked to examine, as an appellate body any errors or mistakes in the recommendation of the Fitment Committee as may be pointed out to it by the employees. The Fitment Appellate Committee received a large number of representations, against the recommendations made by the Fitment Committee by many sections of the State Government employees," including the elementary school teachers. The Fitment Appellate Committee considered the case of the elementary school teachers and made its recommendation slightly modifying the recommendations of the Fitment Committee. The recommendation of the Fitment Appellate Committee-on the point at issue is to be found in para 31.32 of its report the relevant extract from which is as follows:

The Committee is of the view that the present scheme of things in which Graduate untrained teacher has been equated with a Matric untrained teacher is not entirely fair. It hardly needs to be pointed out that the mental horizons and conceptual abilities of a Graduate are far superior to that of a Matriculate. Keeping this in view, the Committee feels that the Graduate untrained teachers should also be provisionally given the scale of Matric trained teachers i.e. Rs. 4500-7000. At the same time, in accordance with the condition laid down in the Finance Department letter no. 3805, dated 25.6.1999, such teachers also should be asked to complete the training programme on their turn and clear the examination failing which they would have to revert to the scale of untrained teacher (Rs. 3050-4590) and the excess payment made to them would be liable for recovery. It has also been pointed out to the Committee that the deputation of untrained teachers for training is not being done strictly by seniority which may lead to anomalies. The Committee would like that the principle of seniority

must be strictly adhered to while deputing untrained teachers for training.

(emphasis added)

25. The report of the Fitment Appellate Committee was submitted to the State Government on 18.12.2000. It may also be noted that in the notification, constituting the Fitment Appellate Committee it was expressly provided that the recommendations made by the Appellate Committee would be binding on the parties, meaning thereby the Government and the different sections of the State Government employees.

26. The report of the Fitment Appellate Committee was submitted to the State Government about nine months ago and this Court is unable to see why the recommendations made by the Appellate Committee in respect of elementary school teachers, on the issue in dispute, should not be implemented by now. In case the recommendations of the Fitment Appellate Committee are implemented as was provided in the notification by which it was constituted, the present controversy would have been resolved to a very great extent.

27. Coming now to the other issue of the failure of the State Government to hold the teachers' training examination, it may be noted that after the change in the recruitment qualifications when the Commission issued the advertisement inviting applications from candidates, including those who did not possess the teachers' training qualification, the change in the recruitment qualification was challenged by some trained candidates. It was submitted that the change in the recruitment qualification had greatly enlarged the area of consideration. According to them, this was unreasonable because the government still intended to send the appointees for in-service training. The challenge failed before this Court and the matter then went to the Supreme Court in SLP (Civil) No. 23187 of 1996. The SLP was dismissed by order, dated 5.9.1997. In that order, the Supreme Court took note of the fact that following the change in the recruitment qualifications, changes were also made in the training course and issued a direction to the State Government to ensure that all untrained teachers were trained within two years from the date of the order. The relevant extract from the order of the Supreme Court is as follows:

From the affidavit of Shri Deepak Kumar it appears that although appointment of Assistant Teachers on the basis of the impugned selection was made in August 1994 no steps have been taken so far by the State Government for imparting training to the untrained teachers. All that has been said in the affidavit of Shri Deepak Kumar is that the training period of two years is being reduced to one year and the syllabus for the one year course is yet to be prepared. This lacadaical approach in the matter of imparting training "0 persons who are required to teach students is indefensible. It is, therefore, directed that the State Government shall take immediate steps to finalize the syllabus and that the training course for training of the untrained teachers should commence from October 1, 1997. It must be ensured that all the untrained teachers who have

been appointed as per the aforementioned selection are duly trained within two years time.

(emphasis added)

28. The State Government has completely failed even to comply with the positive direction by the Supreme Court.

29. It is noted above that the State Government's failure to make arrangement for holding the examination is one of the two major causes resulting in this controversy, affecting thousands of elementary school teachers. Therefore, while this case was being argued at the bar, this Court strongly felt the need for holding the examination without any further delay so that all those teachers who have completed their in-service training may get an opportunity to clear the examination.

30. On 5.9.2001 the hearing of this case was adjourned with the court asking Mr. S. C. IX to get instructions on the feasibility of holding a special examination only for the elementary school teachers who were appointed after 1991.

31. When this case was again taken up on 11.9.2001 Mr. S.C. IX produced before this Court a letter, dated 13.8.2001 written by the Commissioner-cum-Secretary, Department of Primary Education to the Administrator, Bihar School Examination Board. In that letter, a request was made exactly on the same line as suggested by the court, that is to say, the Bihar School Examination Board was requested to hold a special examination for the elementary school teachers who after their recruitment had completed the one year in-service training course. In the letter a request was made to hold such an examination as soon as possible.

32. Having thus discussed the material facts and circumstances it appears to this Court that implementation of the Fitment Appellate Committee's recommendation coupled with the holding of a special examination for the elementary school teachers who were recruited after 1991 and who have completed their in-service training course will resolve and settle this controversy in the best possible manner.

33. On hearing a number of counsel appearing on behalf of the different Petitioners in this batch of writ petitions and Mr. S.C. IX appearing for the State and after giving all the material facts and circumstances my most careful consideration, I propose to pass the following orders which, according to this Court, would best subserve the interests of justice, fairness and reasonableness.

34. The State Government particularly in its Departments of Finance and Primary Education is directed to issue necessary notification(s) implementing the recommendations of the Fitment Appellate Committee in respect of the elementary school teachers on the point at issue. The necessary notifications should be issued without any delay and preferably within two weeks from the date of receipt/production of a copy of this order. According to the report of the Fitment Appellate Committee, its recommendations are to be implemented

notionally with effect from 1.1.1996 and effectively from 1.4.1997.

35. The recommendations of the Fitment Appellate Committee would cover matric and intermediate trained teachers and graduate and post graduate untrained teachers.

36. The intermediate untrained teachers will still fall out-side the recommendations of the Fitment Appellate Committee but in their case also there will be no question of any recovery as any payment made to them was not on the basis of any misrepresentation or fault on their part. What was paid to them was under resolution, dated 18.12.1989 and the circular, dated 25.6.1999 when the circular held the field before being set aside by this Court.

37. The Respondent authorities will make arrangements for holding a special examination as suggested in the letter, date 10.8.2001 from the Commissioner-cum-Secretary, Primary Education to the Administrator, Bihar School Examination Board. Though it is not before this Court in this batch of petitions, it is expected that the Board will honour this Court's wishes and request and try to hold the special examination and publish its results as early as possible, preferably within this year and in any event not later than six months from the date of receipt/production of a copy of this order before the Board.

38. All elementary school teachers who might have completed the one year in-service training before the last date for submission of fees and forms etc. before the Board will be eligible to appear in the examination. Their cases will abide by the recommendations made in the report of the Fitment Appellate Committee.

39. Further, steps will be taken for sending for training all those who are yet to be sent for in-service training. The untrained teachers will be sent for in-service training strictly on the basis of seniority. After the remaining teachers have completed their training, another special examination will be held for them and depending upon their result, their cases too will abide by the report of the Fitment Appellate Committee.

40. this Court further hopes that this order will atleast resolve and settle the issue of matric trained and matric untrained scales of pay admissible to the different categories of the elementary school teachers.

41. this Court is not unconscious that some I.A. untrained teachers may still be left with the grievance that they were not sent for training though teachers junior to them were sent for the same. In order to finally resolve this controversy and in the larger interests of justice those teachers must wait till such time as they also complete the in-service training and pass the examination. However, to safeguard their interests it is made clear that the grant of matric trained scale of pay to others will not effect (sic-affect?) the seniority position of those teachers who though being senior, were not sent for the in- service training for no fault on their part but due to the laches of the authorities. And the seniority position of all those teachers will be restored provided on receiving the in-service training they

pass the next examination that may be made available to them.

42. Before parting with the records of this case, this Court would like to record its appreciation for the help and assistance rendered by different sets of counsel appearing for the Petitioners and Mr. Sanjay Singh, S. C. IX appearing for the State.

43. All these writ petitions stand disposed of with the aforesaid directions and observations.