

**(2010) 04 PAT CK 0050**

**In the Patna High Court**

**Case No : LPA No's. 1613 of 2009 and 90 of 2010**

The State of Bihar and Others

APPELLANT

Vs

Raj Kumar Prasad Singh

RESPONDENT

---

**Date of Decision : 19-04-2010**

**Acts Referred:**

**Citation : (2011) 1 PLJR 346**

**Hon'ble Judges : Dipak Misra, C.J;Mihir Kr. Jha, J**

**Bench : Division Bench**

---

## **Judgement**

I.A. No. 8495/2009

1. Heard Mr. Prabhakar Tekriwal, learned Counsel for the Appellants in both the cases as also Mr. S.B.K. Mangalam, learned Counsel for the Respondent-writ Petitioner.

2. In the light of the submissions made by the parties as also taking into account the averments made in this application the delay in filing of this appeal is hereby condoned.

3. I.A. No. 8495/2009 is, accordingly, allowed.

I.A. No. 407/2010

4. This is also an application for condonation of delay in filing of L.P.A. No. 90/2010.

5. Counsel submits that filing of this appeal was delayed only because the Appellants were seeking review of the impugned order.

6. Thus, in the light of the aforementioned submissions as also the facts and circumstances enumerated in this application, the delay in filing of L.P.A. No. 90/2010 is also condoned.

7. I.A. No. 407/2010 is, accordingly, allowed.

8. Having condoned the delay in filing of both the appeals we are also inclined to take up hearing of these two appeals on merit for the purpose of its being disposed of at the admission stage. We have, accordingly, heard the counsel for both the parties at length.

9. L.P.A. No. 90/2010 is directed against the order of the learned Single Judge dated 14.9.2007 in C.W.J.C. No. 11502/2000, whereby and whereunder the prayer of the Respondent-writ Petitioner for grant of pay scale of Science Trained Graduate Teacher with effect from 5.10.1995 has been allowed.

10. L.P.A. No. 1613/2009 is directed against the order of the learned Single Judge dated 13.1.2009 in Civil Review No. 141/2008 dismissing the prayer of the Appellant State of Bihar for modifying/recalling the order dated 14.9.2007 in C.W.J.C. No. 11502/2000. Thus, it would become clear that the subject matter of both the appeals are one and the same.

11. From the records of C.W.J.C. No. 11502/2000 it would appear that the Respondent-writ Petitioner had filed the writ application for grant of promotion in the pay scale of Science Trained Graduate Teacher with effect from 5.10.1995 when according to him several teachers junior to him had been granted such promotion. There was also a prayer for consequential benefit in monitory terms. The specific case of the Respondent-writ Petitioner was that in the year 1995 while his juniors were promoted and given the financial benefit of Science Trained Graduate Teacher he was not given such benefit only on account of an order of his suspension dated 18.9.1995. The further case of the Respondent-writ Petitioner was that his order of suspension was subsequently revoked on 21.4.1997 with full financial benefits for the period of suspension but even then he was not given the benefit of promotion from the date his juniors were given such promotion.

12. Though in the counter affidavit filed at the stage of the writ petition the Appellants had taken a plea that the Respondent-writ Petitioner was not entitled to promotion from the retrospective effect and the matter was in fact still under consideration before the District Magistrate, the Chairman of the Establishment Committee but in effect no cogent reasons were given therein which could have denied the Respondent-writ Petitioner from grant of promotion on the post of Graduate Trained Science Teacher. The learned Single Judge in those circumstances had held that as no punishment was ever inflicted in respect of the Respondent-writ Petitioner there could be no justification in holding the benefit of promotion from the date the juniors to him were given promotion i.e. 5.10.1995. The writ application was accordingly disposed of by giving a direction for grant of benefit of pay scale of Science Trained Graduate Teacher to the Respondent-writ Petitioner with effect from 5.10.1995 with full financial benefit within a period of three months from the date of receipt/production of a copy of the order, failing which the Respondents-were also to pay interest @ 6% per annum from the date the amount became due till the date of payment.

13. The Appellants thereafter had filed Civil Review No. 141/2008 wherein a plea was taken that the Respondent-writ Petitioner was actually not entitled for grant of benefit of pay scale of Science Trained Graduate Teacher, inasmuch as even the persons, who were given promotion with effect from 5.10.1995, were not held to be entitled for such promotion and in their case also the Department had taken a decision to recall their grant of pay scale of Science Trained Graduate Teacher. In this context it was explained that on a direction of this Court in the order dated 2.3.2007 in C.W.J.C. No. 12419/2000 for considering grant of similar Science Trained Graduate Teachers pay scale to one Abdus Sattar Khan it was discovered that a large number of anomaly was adopted in grant of Science Trained Graduate Teacher, as a result whereof the District Education Establishment Committee in its meeting held on 26.11.2004 had decided to cancel promotion of Sheoshankar Prasad and Bhuneshwar Prasad Yadav who were granted such graduate trained scale with effect from 5.10.1995 and accordingly, such order of cancellation of their promotion and grant of Graduate Trained Science Teachers pay scale was also cancelled vide Memo No. 4403 dated 28.12.2004. It was, thus, impressed upon this Court that the Respondent-writ Petitioner was not entitled to grant such Graduate Trained Science Teacher pay scale, inasmuch as both the seniors and juniors, who were granted such pay scale with effect from 5.10.1995, were themselves found to be not entitled for the same. The learned Single Judge, however, had dismissed the application for review on the ground that such new facts which ought to have been brought on record in the connected writ application by filing a supplementary counter affidavit could not have been taken into account in the narrow scope of review jurisdiction.

14. Mr. Prabhakar Tekriwal while assailing both the orders has submitted that grant of B. Sc. trained pay scale of Science Teacher was not automatic, rather the rule of seniority-cum-suitability had to be applied and this aspect of the matter was altogether ignored in the earlier decision taken by the District Education Establishment Committee in the meeting held on 5.10.1995, inasmuch as there was no roaster clearance as a result whereof the posts of Graduate Trained Science Teacher meant exclusively for reserved category were filled up by giving promotion to the teachers of general category. It was further explained that a large number of senior teachers to the Respondent-writ Petitioner whose name figured above the Respondent-writ Petitioner in the gradation list have not yet been given the benefit of higher pay scale of Graduate Trained Science Teacher. It was in this context that Mr. Tekriwal has also explained that four persons including the Respondent-writ Petitioner as also Sheoshankar Prasad and Bhuneshwar Prasad Yadav were found to have been considered and found eligible for grant of B. Sc. Trained Science Teachers pay scale in the meeting of the Establishment Committee on 2.10.1995 and accordingly, the Establishment Committee in the meeting held on 26.11.2004 had decided to cancel promotion of Sheoshankar Prasad and Bhuneshwar Prasad Yadav and they were accordingly reverted to their earlier post and pay scale vide Memo No. 4403 dated

28.12.2004. It has been also sought to be explained by Mr. Tekriwal that the whole matter relating to grant of promotion in the Graduate Trained Science Teachers pay scale was under consideration before the Director of Primary Education and as such, it would be perpetuating illegality if the direction of the learned Single Judge for also giving B. Sc. trained scale of pay of Science Teacher is given to the Respondent-writ Petitioner.

15. Mr. S.B.K. Mangalam, learned Counsel for the Respondent-writ Petitioner, on the other hand, had submitted that in this protracted course of litigation of last ten years the Respondent-writ Petitioner had already retired from the service and it was now only the question of monetary benefit on account of grant of Graduate Trained Science Teachers pay scale with effect from 5.10.1995 which had also to elements, namely, payment of arrears of salary as also revision of retirement benefits which were to be adjudicated by the appellate court. In this context he had submitted that even though the Appellants had cancelled the promotion of two of his juniors, namely, Sheoshankar Prasad and Bhuneshwar Prasad Yadav by an order dated 28.12.2004 but B. Sc. trained scale given to yet another junior, namely, Janeshwar Prasad was still in existence. It was further explained that even though the order of grant of B. Sc. trained scale of pay in respect of Sheoshankar Prasad and Bhuneshwar Prasad Yadav was cancelled on 28.12.2004 but they were not subjected to any order of recovery of monetary benefit and as such, the Respondent-writ Petitioner should not be now after his retirement made to suffer in the matter on receipt of his arrears of salary and the pensionary benefits on the basis of B. Sc. trained scale pay.

16. It is true that the Appellants have never adopted an uniform standard for grant of B. Sc. trained scale of pay and there has been a large scale of anomaly in grant of such higher pay scale of B. Sc. Science Trained Teacher but then for that the Appellants have to blame themselves. In the concept of grant of graduate trained scale of pay a teacher becomes eligible for higher pay scale only when he would complete eight years of minimum service and he would come within the zone of number of sanctioned post available for such post. Grant of graduate trained scale pay is not a time bound promotion; rather it is to be given on the basis of seniority-cum-suitability and subject to availability of number of specified post for each of the district which is the unit for grant of graduate trained scale of pay.

17. Judged in this background we find considerable force in the submission of the learned Counsel for the Appellants, inasmuch as even in the case of the Respondent-writ Petitioner he had passed his B. Sc. examination only in the year 1988, whereas Sheoshankar Prasad and Bhuneshwar Prasad Yadav, the two juniors to him, had passed B. Sc. examination in 1989 and 1992 respectively. The three of them, therefore, could not have been granted B. Sc. trained scale Science Teachers pay only by virtue of passing B. Sc. examination unless there was vacancy in the district and they were sufficiently senior to fill up those vacancies. Moreover, even in those vacancy the roster following reservation

policy of the Government was to be applied which admittedly was not followed while granting B. Sc. trained scale of pay to Sheoshankar Prasad, Janeshwar Prasad and Bhuneshwar Prasad Yadav, the alleged three juniors to the Respondent-writ Petitioner.

18. In such a situation we could have easily examined the submission of Mr. Tekriwal but then the question remains that when grant of B. Sc. trained scale of pay has not been cancelled in case of Janeshwar Prasad till date and even Sheoshankar Prasad and Bhuneshwar Prasad Yadav though reverted to their original pay scale by an order dated 28.12.2004 have not been subjected to any recovery from the salary already paid to them in B. Sc. trained scale of pay from 5.10.1995 to 28.12.2004, it would be really harsh to deprive from the benefit of graduate trained teachers pay scale taking into account that he has already retired from service.

19. It is true that illegal order passed in favour of juniors to the Respondent-writ Petitioner in the matter of grant of B. Sc. trained scale of pay cannot be used as a precedent for also perpetuating the similar illegality in the case of the Respondent-writ Petitioner but then if till date Janeshwar Prasad has not been subjected to being reduced to his original pay scale and he being junior to the Respondent-writ Petitioner is still drawing the benefits of B. Sc. pay scale of pay, this Court would find it difficult to at least deny the retirement benefits to be drawn by the Respondent-writ Petitioner in the lower scale of pay.

20. We do appreciate the submission of Mr. Tekriwal that there would be no benefit to the Respondent-writ Petitioner if the order with regard to grant of B. Sc. trained scale to him is also complied by giving him the benefit of higher salary with effect from 5.10.1995 for its being again cancelled in the manner it was done in the case of Sheoshankar Prasad and Bhuneshwar Prasad Yadav by an order dated 28.12.2004 but then this Court is not aware as to whether those two persons have also retired or that they would have also no similar chance of being given the higher scale of pay of Graduate Trained Science Teacher alike the Respondent-writ Petitioner who after his superannuation may not be found to be eligible for grant of such graduate trained scale of pay only because of his retirement.

21. Thus, in order to balance equities, this Court would direct the Appellants to give notional promotion by way of grant of B. Sc. trained scale of pay to the Respondent-writ Petitioner with effect from 5.10.1995 and pay his retirement benefits on the basis of his last salary which he ought to have drawn, had he been granted graduate trained scale of pay alike his juniors with effect from 5.10.1995. In other words, we must clarify, the order of the learned Single Judge would remain undisturbed save and except that the Respondent-writ Petitioner upon being given the B. Sc. trained scale of pay with effect from 5.10.1995 would not be entitled for any arrears of salary in the said pay scale till the date of his retirement but his entire retirement benefit would be calculated by computing his last pay in B. Sc. trained teachers pay scale with effect from

5.10.1995. His entire retirement benefit including pension, gratuity, leave encashment would, therefore, be recalculated by refixing his salary in B. Sc. trained pay scale and difference of amount of retirement benefit will also be extended to him within a period of three months from the date of receipt/production of a copy of this order. As we have deprived the Respondent-writ Petitioner from any actually financial benefit in B. Sc. trained scale of pay from 5.10.1995 till the date of his retirement and have only allowed his notional fixation in the B. Sc. trained scale of pay we would make clear that any adverse order passed in future against Sheoshankar Prasad, Janeshwar Prasad and Bhuneshwar Prasad Yadav as with regard to their date of grant of B. Sc. trained scale of pay or financial emolument thereof will not be a ground for his lowering last pay of the Respondent-writ Petitioner much less making recovery of higher amount of retirement benefit which he would become entitled to in view of the present order.

22. These two appeals, accordingly, are disposed of by modifying the order of the learned Single Judge only to the extent indicated above. There would be, however, no order as to costs.