
(2015) 03 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18200 of 2012

Uday Chandra Jha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 309

Citation : (2015) 03 PAT CK 0028

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Umesh Kumar Mishra, for the Appellant; Parth Sharthi, SC,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties.

2. In this writ application the two petitioners have made the following prayer:

"i) For issuance of an appropriate writ in the nature of certiorari for quashing the memo No. 1443 dated 12.4.2012 issued under the signature of the District Programme Officer (Establishment), Begusarai by which he has directed the Block Education Officer, Bachhawara cum Drawing and Disbursing Officer, Bachhawara by which he has directed the Block Education Officer, Bachhawara cum Drawing and Disbursing Officer, Bachhawara for verification of pay fixation of the teachers from the District Accounts Officer, Begusarai and if the excess payment has been received then the same be recovered and deposited in Treasury and further for quashing the letter No. 2308 dated 18.7.2012 issued under the signature of the District Programme Officer (Establishment), Begusarai by which he has directed for recovery of one installment of alleged excess payment due to fixation without considering the facts and circumstances under which the fixation has been made on the basis of direction of the authority and in accordance with the provision and as per the memo No. 790 dated 29.7.2011.

ii) For issuance of an appropriate writ in the nature of prohibition by restraining the respondent authorities concerned to not make any recovery from the salary of the petitioners as the petitioners payment have been made on the basis of memo No. 790 dated 29.7.2011 issued by the Human Resources Development Department, Govt. of Bihar, Patna.

iii) For issuance of an appropriate writ in the nature of prohibition by restraining the respondent authorities concerned to not lower down the pay scale of the petitioners as fixation has been made as per the direction of the memo No. 790 dated 29.7.2011 and allow the petitioners to get the scale which has been given by the authority to the petitioners.

iv) For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to pay the salary of the petitioners as per the fixation made by the Drawing and Disbursing Officer in accordance with the State Govt. resolution."

3. From the reading of the impugned order passed by the District Programme Officer (Establishment) dated 12.4.2012 it would appear that there was a general direction for making verification of salary paid to the teachers in Bachhawara Block in the district of Begusarai wherein the following directions were given:

4. As a matter of fact the subsequent impugned order dated 18.7.2012 also is a somewhat general direction again to the Drawing and Disbursing Officer of Bachhawara Block wherein the District Programme Officer (Establishment) has reiterated the Government decision with regard to making recovery of excess amount drawn from such of the teachers who were not entitled to get their pay fixation in the Matric trained pay scale with effect from 1.10.2003. The impugned order dated 18.7.2012 also reads as follows:

5. As a matter of fact this writ application was filed on 26.9.2012 at a point of time when immediately after detection of the fact that a large number of teachers in Begusarai District were wrongly granted the benefit of Matric trained pay scale by misconstruing the Government resolution dated 29.7.2012.

6. As would be noticed from the contents of the aforementioned two orders they are quite general in nature and no flaw can be found in such directions, inasmuch as if any wrong payment has been made to any teacher to which he was not entitled that is bound to be recovered. The aspect with regard to recovery of an excess amount of salary drawn by a Government servant stands settled in the judgment of the Apex Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, , wherein the law has been laid down in the following terms:

"13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On

the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers" money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered."

7. As a matter of fact there is lack of complete detail which can even go to show as to how the petitioners are aggrieved by the aforementioned order, inasmuch as in none of the two impugned orders the name of the petitioners figure.

8. From the averments made in the writ application it is also clear that both the petitioners were appointed on compassionate ground on 12.8.1996 and 10.10.1996 and while petitioner No. 1 was a graduate at the time of his appointment, petitioner No. 2 was only Intermediate at the time of his appointment. They have very conveniently not brought their appointment letter which in no uncertain terms carries the terms and conditions of appointment including their payment of salary in the Matric trained pay scale till they would acquire their qualification of a Matric trained teachers after completing the teachers training course. According to the petitioners, they have passed their teachers training course on 20.6.2005 and in normal circumstances they would be entitled for their grant of Matric trained pay scale only with effect from passing of teachers training examination i.e. 20.6.2005.

9. The petitioners, however, want that they should be given the benefit of Matric trained pay scale with effect from 1.10.2003 on the basis of Government resolution dated 29.7.2011. From a bare reading of the resolution dated 29.7.2011 it would appear that the same was issued in respect of a specific

category of appellants before this Court who already been granted their Matric trained pay scale in view of their having higher qualification at the time of their appointment through the Bihar Public Service Commission. The petitioners are not in any way covered by the judgment of the Division Bench in the case of Chandra Kanta v. the State of Bihar and ors., reported in 2010(4) PLJR 732. In the case of Chandra Kanta (supra) the Division Bench had actually issued a direction for the appellants before this Court in the batch of those cases for one time relaxation as would be apparent from paragraph No. 30 of the aforementioned judgment which reads as follows:

"30. Coming to the last issue, we find merit in the submission advanced on behalf of the appellants that due to inability of the State Government to hold the required examination within a reasonable time, the appellants who were successful, have suffered undue hardship. In that view of the matter, when the examination could not be held within two years in spite of directions of the Apex Court and even later as per direction of this Court, we are of the view that the State Government which has the necessary powers, must take steps to relax Rule 11 of the Rules as a one time measure within a reasonable time and take a prompt decision to grant matric trained scale to the teachers who has passed the in-service training examination in June, 2005 from any date which may be found suitable and reasonable so as not to affect such teachers adversely for the unusual delay in holding the training examination. It would be reasonable and appropriate to grant matric trained scale to such teachers as indicated above from any reasonable date, may be from the date when the period of two years fixed by the Apex Court for completing the training of such teachers expired without compliance or even from 1.10.2003, i.e. when actual payment in Matric trained scale was stopped. Keeping in view the requirements of Article 14 of the Constitution, benefit of advancing the date for grant of Matric trained scale, as indicated above will also be made available to such teachers who may pass the training examination in the second attempt. For them the date will vary but benefit should be on same line as given to those who have passed in the first attempt." 10. The subsequent Government decision dated 29.7.2011 issued only by way of implementation of the aforementioned observations of the Division Bench in the case of Chandra Kanta (supra) which reads as follows:

11. The applicability of the aforementioned circular in cases where such Matric trained pay scale was already not granted prior to 29.7.2011 was gone into in the case of Rahul Kumar and Others Vs. The State of Bihar and Others, , wherein it was held as follows:

"7. In Chandra Kant (supra) noticing the promulgation of the Bihar Elementary School Teachers Appointment Rules framed on 8.10.1991 the finding is that Rule 11 prohibits grant of trained scale unless and until the incumbent has acquired the training qualification. No executive instruction could dilute the same. The ratio or the discussion cannot be deduced devoid of the facts of the case which can be noticed from para 10 of the judgment. The petitioners therein had

completed their training but the examination was not being held. More over the results were published long after the examination was held. The findings are to be noticed in para 29 that no mandamus could be issued for grant of the trained scale contrary to Rule 11. It was in the special facts as noticed in para 30 of the judgment, attributable to the inability of the State Government to hold the required examination within reasonable time causing hardship and sufferance to those who had completed the training but examination could not be held, noticing the power in Rule 11 for relaxation directions were given to consider their cases in accordance with law." 12. Thus, in absence of any detail as to how the petitioners would be covered by the judgment of Chandra Kanta (supra) when they had not been recruited through the Bihar Public Service Commission and were specifically governed by their own specific terms and conditions of their appointment letter based on compassion and were definitely not given the Matric trained pay scale on the basis of their higher qualification prior to 29.7.2011 their cases will have to be governed only on the basis of their terms of appointment. As noted above, the petitioners have not brought either the appointment letter on record nor the order by which they were granted Matric trained pay scale nor even a letter by which the date of grant of Matric trained pay scale was sought to be shifted from 1.10.2003 to 20.6.2005.

13. As a matter of fact it is this aspect which has also sought to be clarified in the impugned order passed by the Director, Primary Education on 3.9.2012 which is more or less by way of clarification in respect of a query made by the District Education Officer, Saharsa. The said order dated 3.9.2012 for the sake of clarity and convenient is quoted hereinbelow:

14. The said decision of the Director, Primary Education infact is in complete conformity with the Bihar Elementary Teacher Appointment Rules, which reads as follows:

15. As would be evident a teacher appointed in untrained Matric pay scale would be entitled in terms of the aforementioned Rule 11 only with effect from the date of passing of his training examination and therefore, no executive instruction is capable of supplanting the statutory Rules, an aspect which was also covered by the Division Bench in the case of Chandra Kanta (supra), wherein it was held as follows:

"27. Rule 11 of the Rules has already been extracted and noticed earlier. The wordings of the entire scheme in that rule are clearly mandatory and do not permit any deviation through an administrative decision by the State. In the matter of grant of scale while appointing untrained teachers under the Rules framed under Article 309 of the Constitution, the State Government had no scope to obliterate the qualification between trained teachers and untrained teachers. They had to be appointed and placed in two different scales and the untrained teachers can get the other higher scale only on fulfilling the conditions prescribed in Rule 11, i.e. only on passing the training examination. Earlier executive decision of 1989 may exist in respect of earlier appointees but that

cannot be applied to those elementary teachers who were appointed after the framing of the Rules of 1991. For such later appointees like the appellants the Rules under Article 309 of the Constitution alone shall hold the field, particularly when the provisions in Rule 11 are found to be mandatory. Rules under Article 309 of the Constitution have legislative flavour and executive decision in the light of power available to the State under Article 162 of the Constitution can not supplant the Rules framed under Article 309 of the Constitution. On facts, it is found that decision of 1989 do not supplement the Rules rather they clearly run counter to such rules. Hence, for the teachers appointed after enforcement of 1991 Rules, the decision of 1989 cannot coexist in the matter of appointment in the scales prescribed by the Rules.

28. Such later appointees have to be granted pay scales as determined by the Government from time to time in accordance with Rule 11 of the Rules. So far agreement requiring acceptance of recommendations of FAC is concerned, there can be no quarrel with the proposition of law that there can be no estoppel against statute. Further, a writ court cannot issue mandamus against provisions in the Rules which do not suffer from any legal infirmity. The judgment of Apex Court in the case of *Purushottam Lal v. Union of India* (supra) was in an entirely different fact situation and related to grievance by members within a particular service. It has no application in the facts of the present case.

29. In view of aforesaid discussions and findings, we find ourselves in agreement with the views of the learned Single Judge that grant of lower scale of pay to untrained teachers is in conformity with Rule 11 of the Rules and is also based on sound reasons. Hence, it is not possible to issue a writ of mandamus to implement the recommendations of the FAC. Grant of matric trained scale to untrained teachers cannot be directed by this Court, particularly due to provisions in the Rules. In that view of the matter the Apex Court also in the case of *Ram Vijay Kumar and others v. State of Bihar and others* (supra) directed only for completing the training of untrained teachers within two years."

16. Thus, in view of the statutory provisions this Court would not find any error in the impugned order passed by the Director, Primary Education on 3.9.2012 and the petitioners' challenge to the same must be rejected.

17. In view of above, this writ application is disposed of with a liberty to the petitioners to approach the Director, Primary Education who upon examining the individual facts of the case of the petitioners as with regard to the date of their grant of Matric trained scale of pay, only w.e.f. the date of passing the Teachers Training Examination as per Rule-11 and the terms and conditions of their appointment letter would take an appropriate decision in accordance with law.