

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3520 of 2021**

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1. Pankaj Kumar, Son of Late Kamal Prasad Singh, Resident of Mohalla-Jhilganj, P.S.-Kotwali, District-Gaya presently posted as Trained Graduate Teacher, Middle School, Barew, Manpur.
2. Manoj Kumar, Son of Late Ram Padhanath Singh, R/o Village-Ulli Banahi, P.O. and P.S. Nauhatta, Distt. Rohtas.
3. Santosh Kumar Sinha, Son of Sudhir Kumar Sinha, Resident of Mohalla-New Godown P.S. Kotwali, District-Gaya, presnetly posted as Trained Graduate Teacher, Middle School, Padya, Barachatti.
4. Vinay Kumar, Son of Ambika Prasad, Resident of Village-Ghura Ghat, P.S.-Dobhi, District-Gaya presently posted as Trained Graduate Teacher, Middle School, Dariousas, Gurua.
5. Sanjay Kumar, Son of Sheo Prasad Singh, Resident of Mohalla-Lakhapura, P.S.-Vishnupad, District-Gaya presently posted as Head Master Middle School, Kolauna, Gurua
6. Mahendra Ram, Son of Ghurjekan Ram, Resident of Mohalla-Belichak, P.S. Sherghati, District-Gaya presently posted as Head Master, Middle School, Baligaon, Gurua.
7. Uday Kumar, Son of Kapildeo Prasad, Resident of Village-Jakhanpur, P.S. Vishnupad, District-Gaya presently posted as Head Master, Middle School, Itwan-1, Gurua.
8. Anand Manohar, Son of Birju Chaudhary, Resident of Mohalla-Ganori Saw Lane, Barke Deka, P.S.-Delha, District-Gaya presently posted as Head Master, Middle School, Kaj, Gurua.
9. Niraj Kumar, Son of Vijay Kumar Singh, Resident of Mohalla-Vijay Kumar Singh, Resident of Mohalla Prithvipur, ChiraiyaTand, Kankarbagh, P.S. Kankarbagh, District-Patna, presently posted as Head Master, Middle, Koiri Bigha, Gurua.
10. Sanjay Kumar Sharma, Son of Jagdeo Sharma, Resident of Village-Tali, P.S. Bodh Gaya, District Gaya presently posted as Head Master, Middle School, Gudru, Gurua.
11. Awadhesh Kumar Singh, Son of Ram Narayan Singh, Resident of Village-Panawan, P.S. Jamhare, District-Gaya, presently posted as Head Master, Middle School, Jaipur, Gurua.
12. Arjun Das, Son of Faguni Das, Resident of Village-Bharari, P.S. Sherghati, District-Gaya, presently posted as Head Master, Middle School, Nadiyawan, Gurua.
13. Satyendra Kumar Ravi, Son of Shankas Ram, Resident of Village-Alawalapur, P.S. Gouri Chak, District-Patna presently posted as Head Master, Urdu Middle School, Sesari, Gurua.
14. Ashok Kumar Pankaj, Son of Late Kali Charan Ram, Resident of Village-Gareri Bigha, P.S. Gurua, District Gaya, presently posted as Head Master, Middle School, Chei, Gurua.
15. Saroj Bharti, Son of Dhumranath Bharti, Resident Mohalla-Binewa Nagar,



P.S. Magadh Medical College, District-Gaya, presently posted as Head Master, Bemata Nagar, Town, Gaya.

16. Foto Kumar Nirala, Son of Late Deonandan Prasad, Resident of Village-Pakri Guriya, P.S. Imamganj, District-Gaya, presently posted as Head Master, Srinagar, Baiju Bigha, Bodhgaya, Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Dept. of Education, Bihar, Patna.
2. The Additional Chief Secretary, Dept. of Education, Bihar, Patna.
3. The Director, Dept. of Education, Bihar, Patna.
4. The District Magistrate, Gaya.
5. The Rejnal Deputy Director of Education, Magadh Division, Gaya.
6. The District Education Officer, Gaya.
7. District Program Officer, Establishment, Gaya.
8. District Account Officer, Gaya.
9. Treasury Officer, Gaya.
10. Treasury Officer, Sherghati.
11. Block Education Officer, Manipur.
12. Block Education Officer, Gurua.
13. School Sub Inspector, Nagar Nigam, North Gaya.
14. Block Education Officer, Barachatti, Gaya.
15. Block Education Officer, Nagar Prakhand Gaya.
16. Block Education Officer, Bodhgaya, Gaya.
17. Head Master, Middle School, Manpur Adda, Gaya.
18. Head Master, Mahavir Middle School, Gaya.
19. Head Master, Middle School, Gurua.
20. Head Master, Girls Middle School Bodhgaya, Gaya.
21. Head Master, Middle School Barachatti, Gaya.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Priya Ranjan, Adv.  
For the Respondent/s : Mr. Lalit Kishore ( Ag )

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**ORAL JUDGMENT**

**Date : 26-11-2024**



The issue involved in the instant writ petition relates to fixation of pay-scale of the petitioners on the basis of 7<sup>th</sup> Pay Commission. The dispute between the petitioners and the State respondents is as to whether the pay fixation under 7<sup>th</sup> Pay Commission would be notionally fixed w.e.f. 01.01.2016 and be paid w.e.f. 01.04.2017 or the petitioners have any opportunity to submit their option for fixation of pay-scale under 7<sup>th</sup> Pay Commission, on the basis of their scale of pay on promotion which they received on 21.02.2017.

2. In the instant writ petition the petitioners challenged the order passed by the District Education Officer, Gaya on 25<sup>th</sup>/26<sup>th</sup> November, 2020. The relevant portion of impugned order runs thus:-

“सन्दर्भित वेतन निर्धारण की समीक्षा से स्पष्ट हुआ कि श्री अनुप कुमार, श्री पंकज कुमार एवं श्री आनन्द मनोहर के द्वारा पूर्व पद यथा मैट्रिक प्रशिक्षित/स्नातक प्रशिक्षित पद रिक्त करने और स्नातक प्रशिक्षित/प्रधानाध्यापक के प्रोन्नत पद पर योगदान के फलस्वरूप वित्त विभाग, बिहार के संकल्प संख्या 630 दिनांक 21.01.2020 द्वारा प्रभावी षष्टम् वेतनमान अर्थात् अपुनरीक्षित वेतन संरचना में अगली वेतन वृद्धि की तिथि 01.07.2017 से प्रोन्नत वेतनमान में वेतन निर्धारण का विकल्प चयन कर इसमें वेतन निर्धारण कराया गया और इसके बाद दिनांक 01.01.2016 से प्रभावी पुनरीक्षित वेतन संरचना में दिनांक 01.07.2017 से वेतन निर्धारण कराया गया।



इस प्रकार उक्त तीनों के द्वारा योगदान की तिथि से प्रोन्नत पद का वेतन निर्धारण कराए जाने के बाद दिनांक 01.01.2016 अथवा अगली वेतन वृद्धि की तिथि 01.07.2016 अथवा प्रोन्नति की तिथि के स्थान पर सप्तम् वेतन पुनरीक्षण में दिनांक 01.07.2017 से वेतन निर्धारण का विकल्प चयन नियम के पूर्णतः प्रतिकूल है।

श्री मनोज कुमार के द्वारा पूर्व पद यथा मैट्रिक प्रशिक्षित पद रिक्त करने और स्नातक प्रशिक्षित के प्रोन्नत पद पर दिनांक 22.02.2017 को योगदान के फलस्वरूप दिनांक 01.01.2016 के बाद अपुनरीक्षित वेतन संरचना में 01.07.2016 एवं पुनः दिनांक 01.07.2017 को वार्षिक वेतन वृद्धि प्राप्त करते हुए इस तिथि से प्रोन्नत पद एवं पुनरीक्षित वेतन संरचना में वेतन निर्धारण का विकल्प चयन कर एक साथ दिनांक 23.10.2017 को वेतन निर्धारण कराया गया।

इनके द्वारा नियमानुसार दिनांक 01.01.2016 के बाद अगली वेतन वृद्धि 01.07.2016 अथवा प्रोन्नति की तिथि यथा पूर्व पद रिक्त करने (अपुनरीक्षित वेतन संरचना में दूसरी वार्षिक वेतन वृद्धि की तिथि 01.07.2017 के पूर्व) के आधार पर वेतन निर्धारण नहीं कराए जाने एवं दो विकल्पों का एक साथ चयन किए जाने के आलोक में इनका वेतन निर्धारण वित्त विभागीय प्रावधान के पूर्णतः प्रतिकूल स्थापित होता है। ”

3. It is contended by the learned Advocate on behalf of the petitioners that the impugned order itself is bad in law and violative of the Notification permitting 7<sup>th</sup> Pay Commission by the Government of Bihar to its employees. In order to substantiate his



contention he refers to the Extraordinary Bihar Gazette Notification, published on 24<sup>th</sup> May, 2017, on the subject of revision of pay structure of the State Government employees w.e.f. 01.01.2016. The said Gazette Notification is annexed by the respondents in the supplementary counter affidavit filed by them on 7<sup>th</sup> October, 2024.

4. Learned Advocate on behalf of the petitioners first refers to Clause-2 of the said Notification, wherein it is stipulated:-

*“The revised pay structure shall come into effect notionally from 1<sup>st</sup> January, 2016. However, the actual payments in the revised pay structure would arise with effect from 1<sup>st</sup> April, 2017. The revised pay structure will apply to all State Government employees who were in service on 1<sup>st</sup> January, 2016 and to all new appointments made on or after the said date.”*

5. The learned Advocate on behalf of the petitioners refers to Clause-5 of the said Gazette Notification which deals with drawal of pay in the revised pay structure. Clause 5 says:-

*“ 5. Drawal of Pay in the Revised Pay Structure.-Save as otherwise provided in these rules, a Government servant shall draw pay in the Level in the revised pay structure applicable to the post to which he is appointed, Provided that a Government servant may elect to continue to draw pay in the existing pay structure until the date on*



*which he earns his next or subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure.*

*Provided further that in cases where a Government servant has been placed in a higher grade pay or scale between 1 day of January, 2016 and the date of notification of these rules **on account of promotion or upgradation**, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be.*

*The above option will have to be exercised by 31 July, 2017.”*

6. Clause-9 of the Gazette Notification dated 24<sup>th</sup> May, 2017 states as follows:-

**“9. Date of next increment in revised pay structure-**

*(1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:*

*Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of his appointment, promotion or grant of financial upgradation.*

*(2) The increment in respect of an employee appointed or promoted or granted financial upgradation including upgradation under Modified Assured Career Progression Scheme (MACPS) during the period between*



*the 2nd day of January and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee appointed or promoted or granted financial upgradation including upgradation under MACPS during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.*

***Illustration-***

*(a) In case of an employee appointed or promoted in the morn hierarchy or under MACPS during the period between the 2nd day of July, 2016 and the 1st day of January, 2017, the first increment shall accrue on the 1st day of July, 2017 and thereafter it shall accrue after one year on annual basis.*

*(b) In case of an employee appointed or promoted in the normal hierarchy or under MACPS during the period between 2nd day of January, 2016 and 1st day of July, 2016, who did not draw any increment on 1st day of July, 2016, the next increment shall accrue on 1st day of January, 2017 and thereafter it shall accrue after one year on annual basis:*

*Provided that in the case of employees whose pay in the revised pay structure has been fixed as on. 1st day of January, the next increment in the Level in which the pay was so fixed as on 1st day of January, 2016 shall accrue on 1st day of July, 2016:*

*Provided further that the next increment after drawal of increment on 1st day*



*of July, 2016 shall accrue on 1st day of July, 2017.*

*(3) Where two existing Grades in hierarchy are merged and the junior Government servant in the lower Grade happens to draw more pay in the corresponding Level in the revised pay structure than the pay of the senior Government servant, the pay of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with this Rule.”*

7. It is contended on behalf of the petitioners that the petitioners did not give any option for revision of pay under 7<sup>th</sup> Pay Commission w.e.f. 1<sup>st</sup> January, 2016. In the meantime, the petitioners were promoted on 21<sup>st</sup> February, 2017. Since the actual benefit of revision of pay was granted w.e.f. 1<sup>st</sup> April, 2017, they opted for revision of pay in their promoted/higher grade of pay w.e.f. July, 2017, as they were promoted on 21<sup>st</sup> February, 2017. The respondents have denied their plea in violation of Clause-5 of the Gazette Notification.

8. Learned Advocate on behalf of the respondents, on the other hand, refers to a letter dated 3<sup>rd</sup> November, 2020, written by the District Accounts Officer, Gaya to the District Programme Officer (Establishment), Gaya stating that the claim of the



petitioners could not be entertained, because the revision of pay of the petitioners ought to be determined and fixed notionally w.e.f. 1<sup>st</sup> January, 2016. Their pay cannot be revised on the basis of scale of pay which they received on 01.07.2016 or 01.07.2017. In support of his contention he refers to a Finance Department Notification No. 3590, dated 24.05.2017.

9. The question that arises for adjudication at this stage is as to whether Extraordinary Gazette Notification, specially Clause-5 of the said Gazette Notification, is applicable in the instant case or the Finance Department Notification dated 24.05.2017 will get precedence over the Gazette Notification.

10. It is needless to say that a Gazette Notification being a delegated Legislation has force of statute. When an incumbent was permitted to opt for revision of pay at higher grade of pay on promotion, within a certain period of time and that promotion occurs in respect of the petitioners, there is no reason to deny the petitioners option on the ground of a subsequent Finance Department Notification.

11. In view of the above discussion, the instant writ petition is allowed on context.

12. However, there shall be no order as to costs.



13. The impugned order dated 25<sup>th</sup> November, 2020 is set aside and quashed.

14. The petitioners are entitled to submit their option on the basis of Clause-5 of the Extraordinary Gazette Notification dated 24.05.2017, and in such case, the respondents shall decide their higher scale of pay, within two months from the date of this order.

**(Bibek Chaudhuri, J)**

pravinkumar/-

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Uploading Date	
Transmission Date	

