

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8071 of 2021

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Syed Neyaz Ahmad, son of Late S. Obaidullah, Resident of- Ward no. 3,
village- Rampur Khas, P.S. Hiramma, District- Sheohar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Secretary, Finance Department, Bihar, Patna.
3. The Special Director, Secondary Education, Bihar, Patna.
4. District Education Officer, East Champaran.
5. The District Programme Officer, East Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9197 of 2021

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S. M. Afzal Hussain, Son of Late S. M. Manzar Hasan @ Late Manzar Hassan, Resident of Village- Jamwara, P.O. Pathraita, P.S. and District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Secretary, Finance Department, Bihar, Patna.
3. The Special Director, Secondary Education, Bihar, Patna.
4. District Education Officer, Sheikhpura.
5. The District Programme Officer (Establishment), Shekhpura.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9758 of 2021

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Abdul Quddus, Son of Late Md. Serajuddin, resident of village- Azam Nagar, P.O. and P.S.- Azam Nagar, District- Katihar

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna
2. The Secretary, Finance Department, Bihar, Patna
3. The Special Director, Secondary Education, Bihar, Patna
4. District Education Officer, Katihar
5. The District Programme Officer (Establishment) Katihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11870 of 2021



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Md. Mazharul Haque, Son of Md. Nurul Hoda, Resident of Village-
Quadriganj, P.O. and P.S. Azam Nagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Secretary, Finance Department, Bihar, Patna.
3. The Special Director, Secondary Education, Bihar, Patna.
4. District Education Officer, Katihar.
5. The District Programme Officer, Katihar.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8071 of 2021)

For the Petitioner/s : Mr. Raj Nandan Prasad, Advocate

For the Respondent/s : Mr. Sanjay Kumar, AC to GP-17

(In Civil Writ Jurisdiction Case No. 9197 of 2021)

For the Petitioner/s : Mr. Raj Nandan Prasad, Advocate

For the Respondent/s : Mr. Arvind Kumar, AC to GP-23

(In Civil Writ Jurisdiction Case No. 9758 of 2021)

For the Petitioner/s : Mr. Raj Nandan Prasad, Advocate

For the Respondent/s : Mr. Lalit Kishore (Ag)

(In Civil Writ Jurisdiction Case No. 11870 of 2021)

For the Petitioner/s : Mr. Raj Nandan Prasad, Advocate

For the Respondent/s : Mr. Madanjeet Kumar (GP-20)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 28-11-2022

Heard Mr. Raj Nandan Prasad, learned counsel appearing on behalf of petitioners in all the cases and the respective counsels of the State of Bihar.

2. Since the issue involved in all the writ petitions, raised are the common issues of law while praying for identical reliefs, they were heard together and disposed of by a common order.



3. For the sake of convenience, this Court proceeded to refer to the reliefs prayed by the writ petitioners, which fell for consideration before this Court.

4. The writ petitioners in their respective writ petitions, in sum and substance, seek a direction commanding upon the respondents to pay their leave encashment, gratuity and other retiral benefits, who retired from the post of teachers from their respective recognized Madarsa's at par with Government teachers in the light of the Constitutional mandate and various circulars issued time to time by the Government of Bihar with regard to equal treatment to the Madarsa's Teachers.

5. Some undisputed facts noted in the batch of writ petitions are that the petitioners were appointed as Assistant Teachers in recognized respective Madarsa's and their services were approved by the competent authority and after serving a long unblemished career, they were superannuated on their respective dates of superannuation. It is the admitted fact that the State Government revised the pay scale of the teachers of Madarsa, which were availed by the petitioners from time to time. It is further submitted that as the recognized Government aided Madarsas were initially affiliated by the State of Bihar Madarsa Education Board and the Government sanctioned number of posts of teaching and non-teaching staff and as per the Rules and



Regulations, their salaries were paid through the District Education Officer/ District Programme Officer of the respective districts.

6. Mr. Raj Nandan Prasad, learned counsel for the petitioners further submitted that since there was an anomaly in pay and other allowances between the Government Schools, Minority Schools/Madarsa Schools and the Sanskrit Schools, the Government took a policy decision, as contained in Memo No. 237 dated 20.02.1990 whereby the Government provided salary, dearness allowance, Medical allowance, House rent allowances, Urban allowance and other interim reliefs to the Minority Educational Institutions, including Madarsa and Sanskrit Schools at par with the Government schools. The aforesaid Memo no. 237 dated 20.02.1990 has been brought on record by way of Annexure-2 to the writ petition.

7. Reliance have also been taken on the judgments rendered by this Court as well as the Hon'ble High Court of Jharkhand at Ranchi holding that the aided minority school teachers cannot be discriminated and the benefits given to the Government schools shall also be available to the staff of Minority Schools, Sanskrit Schools and Madarsa teachers. The petitioners heavily relied upon the judgment rendered by the learned coordinate Bench of this Court in the case of Minority Secondary Teachers Association Vs. the State of Bihar & Ors. (CWJC No.



2897 of 2005) and Md. Rustam Ali Vs. The State of Bihar & Ors (CWJC No. 11015 of 2016), as contained in Annexures-5 and 6, and lastly the order passed by this Court in the case of Neyaz Ahmad @ Neyaj Ahmad Vs. The State of Bihar and others (CWJC No. 4145 of 2019), which orders/judgments are the part of the writ petitions.

8. On the other hand, respective counsels for the State have filed their respective counter affidavits in all the writ petitions and by referring to the averments made therein vehemently submit that the entire case of the petitioners is based upon Memo No. 237 dated 20.02.1990, is wholly misconceived in view of the fact that the aforesaid Memo No. 237 dated 20.02.1990 was modified vide Memo No. 893 dated 08.11.1990 and the benefits, which have been allowed to the teaching and non-teaching staff remained confined to the Minority institutions only and thus the teaching and non-teaching staff pertaining to recognized aided Madarasas and recognized aided Sanskrit Schools in the State of Bihar are not entitled for the similar benefits, as has been allowed to the Minority institutions. He further submits that the present issue was subject matter for consideration before a Division Bench of this Court in LPA No. 43 of 2016 (**Baidyanath Jha Vs. The State of Bihar and others**) and other analogous appeals. The learned Division Bench of this Court vide its judgment dated 13.08.2019



has been pleased to hold that teaching and non-teaching staff of Non-Government recognized aided Madarsa/Sanskrit schools are not entitled for retiral benefits/dues e.g. Leave Encashment, Medical Allowance, House Rent Allowance etc.

9. At this juncture, when queries have been made by this Court with regard to the orders/judgments cited by the learned counsel for the petitioners, wherein some favourable orders have been passed to the employees of recognized aided Madarsas, the learned counsel for the State fairly submits that it is true that in some cases, the employees of Non-Government Recognized Aided Madarsas have been able to get favourable order from this Court, including C.W.J.C. No. 4145 of 2019 (Annexure- 7 to the writ petition), but they submit that the said orders have been passed without having any counter affidavit or noticing the Memo No. 893 dated 08.11.1990 as well as without noticing the judgment rendered by the learned Division Bench of this Court in L.P.A. No. 43 of 2016 and other analogous appeals. He further submits that the State of Bihar has preferred Review application in all such matters, which are still pending consideration before this Court.

10. Having heard the parties at length and considered the materials available on record, the orders/judgments passed by this Court, including the judgment rendered by the learned



Division Bench of this Court in L.P.A. No. 43 of 2016 and other analogous appeals.

11. After going through the judgment, it is evident that there is great distinction between the Non-Government Recognized Aided Madarsa and Minority schools. So far the Minority schools are concerned, the same are being established under the mandate of Article 29 and 30 of the Constitution of India and they are being governed under the provisions of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. It has further been observed that the minority schools are such schools, which are being established and run by the Minority community, based on religion and linguistic minority communities, which has been declared and recognized as minority schools by the State Government. So far the Non-Government Recognized Aided Madrasas are concerned, the same are being managed by the Private Management Committee and the Government used to provide grant-in-aid to such Madarasas duly recognized and fulfills the requisite criteria for the same.

12. Before parting with the final conclusion, it would also be apt and proper to quote some of the paragraphs of the judgment of the learned Division Bench of this Court passed in L.P.A. No. 43 of 2016, which are as follows:-



“In our opinion the State Government is well within its jurisdiction to draw a pay-scale for institutions of the present kind which though are managed by the private managing committee yet have been given not only recognition by the State Government in its Education Department but also are aided towards payment of salary etc. and since a decision is taken to make payment of salary to teachers and non-teaching employees appointed in such schools and Madarsas after 15.02.2011 on a fixed scale vide resolution dated 31.08.2013, this by itself confirms the right of the appellant-writ petitioners appointed prior to the said date to the pay-scale as well as revision at parity with the teachers and non-teaching staff in Government Schools.

For the discussions above the resolution dated 31.08.2013 in so far as it discriminates the teachers and non-teaching employees of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas for revision of pay-scales under the 5th and 6th Pay Revisions at parity with the revision allowed to the teaching and non- teaching staff in Government Schools, as well as the fixation of arbitrary date for monetary payment is held discriminatory and not backed by a possible explanation.

For the reasons and discussions above, we are satisfied to record that the appellant-writ petitioners have made out a case for indulgence and consequently we direct the respondent authorities in the Education Department including the Principal Secretary to accord the benefits of revision of pay-scales under the 5th and 6th Pay Revisions to the



teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas in the same manner as allowed to the teaching and non-teaching staff in the Government Schools together with dearness allowance admissible thereon and let the exercise together with the payment of differential amount of salary to which the teaching and non-teaching staffs in these schools are entitled, be made within a period of three months from today.

We, however, bearing note of the Constitution Bench judgment of the Supreme Court rendered in the case of **Krishna Kumar Singh** (supra) are not persuaded to allow the payment of superannuation benefits to these teaching and non-teaching staffs in these schools because they are employees of the schools which are run by the private managing committees and thus cannot be held government employees for such admissibility. To such extent we refuse the relief of superannuation benefits for the retired employees of the schools for they do not acquire the status of a government employee and the relief that we have allowed is strictly limited to the revision of pay-scales under the 5th and 6th Pay Revisions together with the dearness allowance admissible thereon.”

13. It is needless to say that the orders/judgments on which reliance has been made by the learned counsel for the petitioners has not taken note of the modified policy decision of the State Government, as contained in Memo No. 893 dated 08.11.1990, apart from the fact that they were passed without



taking into consideration the judgment rendered by the Division Bench of this Court in L.P.A. No. 43 of 2016.

14. This Court is also conscious of the fact that the unsuccessful parties have never assailed the judgment passed in L.P.A. No. 43 of 2016 and the same has attained finality on the issue involved in the present case.

15. Since the issue involved in the present writ applications are set at rest by the learned Division Bench of this Court in L.P.A. No. 43 of 2016 and other analogous appeals (**Baidyanath Jha Vs. The State of Bihar and others**), and as the prayer made in the writ application for grant of retiral benefit has already negated, all the writ applications sans any merit and fit to be dismissed.

16. Accordingly, all the writ applications are dismissed.

(Harish Kumar, J)

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