

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8407 of 2021

Sudha Trivedy wife of Siyaram Pandey Resident of Pushpanjali Bihar, flat no 105, block E, Saristabad Road, Gardanibagh, Patna - 800001.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Education, Bihar, Patna.
3. The Director, Higher Secondary Education Department, Govt. of Bihar, Patna.
4. The Deputy Director, Higher Secondary Education Department, Govt. of Bihar, Patna.
5. The District Magistrate, Vaishali.
6. The Deputy Development Commissioner - cum - Chief Executive Officer, Zila Parishad, Vaishali.
7. The District Education Officer, Vaishali.
8. The District Programme Officer (Establishment) Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. Siyaram Pandey, Advocate.
For the State : Mr. P. K. Shahi, Advocate General.
Mr. Madanjeet Kumar, GP-20.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 01-05-2025

Heard Mr. Tej Bahadur Singh, learned senior counsel along with Mr. Siyaram Pandey, learned counsel appearing on behalf of the petitioner and Mr. P. K. Shahi, learned advocate General along with Mr. Madanjeet Kumar, learned GP-20 for the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought, inter alia, following relief(s), which is



reproduced hereinafter:-

“(I) For issuance of writ of certiorari for setting aside/quashing Para no. (2.8) of file no.11/bi 1-8/2013-1530 dated 11/8/2015 issued by the education department, Gov. of Bihar, Patna (annexure-6)

(II) and be pleased to pass a writ in the nature of writ of mandamus or an appropriate writ/writs, order/orders or direction/directions commanding the respondents to fix and make payment of salary to the petitioner with adding/calculating grade pay in the pay band-5200-20200 with grade pay 2800/ and other benefits like a regular trained assistant teacher as per the letter issued in this regard by the Govt. of Bihar as contained in sankalp sanchika no.11/bi 1-08/2013(ansh-2)1632 dated 21-06-2017(Annexure-7) for which the petitioner is legally entitled for And/or be pleased to pass such other order or orders which may be deemed fit and proper in the facts and circumstances of the case.”

3. The petitioner has challenged the Clause 2.8 of the Resolution No. 1530 dated 11.08.2015 on the ground of discrimination.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a Niyojit Teacher and was appointed on 10.04.2019 on the basis of M.A. and B.Ed degree, as Hindi teacher, to teach Class 10+2 students. The appointment of the petitioner was done in compliance of the order passed by the District Appellate Authority, Vaishali as contained in Memo No. 333 dated 30.03.2019 (Annexure-2). Terms and conditions are laid down in the said appointment letter which shows that the appointment of the petitioner was provisional. The grievance of the petitioner is that Clause 2 of the Resolution dated 11.08.2015 is applicable in her case and the petitioner being M.A. trained is entitled to be paid the Grade



Pay of Rs. 2800/- applicable to the M.A. trained in the Pay Scale of Rs. 5200-20200/-, which is applicable to the Higher Secondary Teachers (10+2 teachers). The petitioner is aggrieved by the terms and conditions of Clause 2.8 contained in the Resolution dated 11.08.2015 that she has been discriminated because of *Kalavadhi* of two years by not giving grade pay and the yearly increment from the date of her appointment / being eligible in accordance with the *Bihar Higher Secondary Teachers (Employment and Service Conditions) Rules, 2006* (hereinafter referred to as the 'Rules 2006').

5. Learned counsel further submitted that the petitioner had qualified STET on 14.03.2013, passed B.Ed on 02.12.2015 and had applied for the fifth phase of teacher appointment as Assistant (+2 teacher) in Hindi Subject on 03.10.2016. The petitioner was appointed on 10.04.2019 vide Memo No. 333 dated 30.03.2019 issued by the D.D.C. cum Chief Executive Officer, Zila Parishad, Vaishali. The petitioner was, however, paid her salary for the first time on 29.05.2020, but without complying with the instruction contained in Certificate No. 1632 dated 21.06.2017 which mandates that trained (+2) teachers are entitled for Grade Pay 2800 with entry pay Rs.8000/- multiplied by Index 2.57.

6. Petitioner is aggrieved for non-payment of Grade



Pay which allegedly has been denied to her. Learned counsel submitted that the Resolution No. 1530 dated 11.08.2015, which for the first time, provides for Grade Pay with Pay Scale to trained teachers only after completion of two years of 'Kalavadhi', is not in conformity with the Rules, 2006 as amended till date. In this background, learned counsel submitted that both trained and untrained teachers have been put on the same platform which is discriminatory and requires interference of this Court.

7. A counter affidavit has been filed on behalf of the State duly sworn by the District Programme Officer (Establishment), Vaishali giving information that the Education Department issued Letter No. 1900 dated 04.10.2019 that those trained teachers who have completed two years service after 01.01.2016 cannot be granted Grade Pay, because the provision of the Grade Pay had ended after 01.01.2016. It has further been stated that the petitioner was appointed on 30.03.2019, thereafter after completion of two years *Kalavadhi*, the petitioner became entitled for Grade Pay 2800, corresponding Level-4, Index-1, as on 10.01.2020, her basic pay was fixed to the tune of Rs.13780/- (Level-1, Index-2) and accordingly, the petitioner is being paid in accordance with law. The petitioner has not been discriminated in any manner.



8. Heard the parties.

9. The Rules, 2006 was amended vide amending provision of Rules, 2006 as contained in Notification No. 1324 dated 03.07.2012.

10. The definition of 'Secondary Teacher' and 'Higher Secondary Teacher' as contained in Rule 3(ii) & (iii) of Rules, 2006 is reproduced hereinafter:

“3 (ii) “नगर माध्यमिक शिक्षक” से अभिप्रेत है माध्यमिक विद्यालय का वैसा शिक्षक जो इस नियमावली के अन्तर्गत माध्यमिक स्तर तक पढ़ाने हेतु नियोजित किया गया हो,

(iii) “नगर उच्चतर माध्यमिक शिक्षक” से अभिप्रेत है माध्यमिक विद्यालय का वैसा शिक्षक जो इस नियमावली के अन्तर्गत उच्चतर, माध्यमिक/इंटर स्तर तक पढ़ाने हेतु नियोजित किया गया हो,

11. Eligibility for appointment to the post of Higher Secondary Teacher as contained in Rule 4 (ख) is reproduced hereinafter:

4 (ख) नगर उच्चतर माध्यमिक शिक्षक के लिए अर्हता,—

(i) भारत का नागरिक हो तथा बिहार राज्य के निवासी हो।

(ii) किसी मान्यता प्राप्त विश्वविद्यालय से विनिर्दिष्ट विषय में न्यूनतम 45 प्रतिशत अंकों के साथ कला, विज्ञान अथवा वाणिज्य विषय में स्नातकोत्तर की डिग्री हो। अनुसूचित जाति/अनुसूचित जन-जाति/अत्यन्त पिछड़ा वर्ग/पिछड़ा वर्ग एवं विकलांग के लिए न्यूनतम निर्धारित अंक में 5 प्रतिशत की छूट दी जाएगी।

(iii) राष्ट्रीय अध्यापक शिक्षा परिषद् अधिनियम लागू होने के पूर्व मान्यता प्राप्त प्रशिक्षण संस्था से बी.एड. अथवा अधिनियम लागू होने के बाद राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा मान्यता प्राप्त प्रशिक्षण संस्था से बी.एड. की डिग्री।

12. The Rule 8 of Rules, 2006 provides for consolidated pay of Rs. 12000/- per month to the trained teachers and Rs. 10,500/- per month to the untrained teachers and also for increment of Rs. 600/- after completion of three



years to the trained teachers and Rs. 500/- to the untrained teachers.

13. Similarly separate Rules were framed keeping in view the spirit / obligation which has been imposed upon the State as per the mandate of Article 41 read with Article 45 of the Constitution to secure Right to Free Education as a fundamental right of children up the age of 14 years. With this object, the Right of Children to Free and Compulsory Education Act, 2009 came into effect and as per the provision of Article 21A of the Constitution, Right to Free Education became the fundamental right of the children up to the age of 14 years to fulfill the said objective, the State of Bihar also framed Rules relating to different Unit and laid down criteria for the teachers to teach in Primary and Middle School in the year 2006.

14. To find out whether the petitioner who is a 10+2 teacher has been discriminated in any manner for non payment of grade pay and her claim that both trained and untrained teachers have been put on the same platform by Clause 2.8 of the Resolution dated 11.08.2015, which has been notified with an object to provide grade pay and corresponding pay scale to all the Niyojit Teachers. To understand Resolution No. 1530 dated 11.08.2015, the same is reproduced hereinafter:

“2. वर्तमान में नियोजित शिक्षक एवं पुस्तकालयाध्यक्ष नियत वेतन पर कार्यरत है। पंचायती राज संस्थाओं के माध्यम से सभी



नियोजित प्रशिक्षित, अप्रशिक्षित प्राथमिक, माध्यमिक, उच्च माध्यमिक शिक्षक एवं पुस्तकालयाध्यक्षों को नियत वेतन के स्थान पर निम्नवत् अनुशासित वेतनमान देने का निर्णय लिया गया है:-

2.1 प्राथमिक शिक्षक

क्र० सं०	पदनाम	संख्या	वेतनमान्	ग्रेड वेतन
1	2	3	4	5
1	प्राथमिक शिक्षक (अप्रशिक्षित)	62031	5200-20200	0
2	प्राथमिक शिक्षक (प्रशिक्षित)	245344	5200-20200	2000
3	प्राथमिक शिक्षक (स्नातक ग्रेड अप्रशिक्षित)	14000	5200-20200	0
4	प्राथमिक शिक्षक (स्नातक ग्रेड प्रशिक्षित)	22739	5200-20200	2400
	कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)	344114		

2.2 माध्यमिक शिक्षक / पुस्तकालयाध्यक्ष

क्र० सं०	पदनाम	संख्या	वेतनमान्	ग्रेड वेतन
1	2	3	4	5
1	माध्यमिक शिक्षक (अप्रशिक्षित)	4463	5200-20200	0
2	माध्यमिक शिक्षक (प्रशिक्षित)	25038	5200-20200	2400
3	पुस्तकालयाध्यक्ष	1900	5200-20200	2400
4	उच्च माध्यमिक शिक्षक (10+2) (अप्रशिक्षित)	3058	5200-20200	0
5	उच्च माध्यमिक शिक्षक (10+2) (प्रशिक्षित)	26774	5200-20200	2800
	कुल शिक्षक (प्रकाशित विज्ञप्ति के विरुद्ध भविष्य में होनेवाली नियुक्ति सहित)	61233		

2.3 प्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्ष को 01 जुलाई, 2015 से 5200-20200 के वेतनमान में 5200 का बेसिक वेतन देय होगा, जिस पर प्राथमिक शिक्षक (प्रशिक्षित) को 2000 रुपये, प्राथमिक शिक्षक (स्नातक ग्रेड प्रशिक्षित), माध्यमिक शिक्षक (प्रशिक्षित) एवं पुस्तकालयाध्यक्ष को 2400 रुपये तथा उच्च माध्यमिक (प्रशिक्षित) शिक्षक को 2800 रुपये को ग्रेड पे देय होगा। पूर्व की गयी सेवा के लिए प्रत्येक तीन वर्ष की सेवा के लिए एक वार्षिक वेतन वृद्धि तीन प्रतिशत की दर से देय होगी।

2.4 अप्रशिक्षित प्रारंभिक, अप्रशिक्षित माध्यमिक एवं अप्रशिक्षित उच्च माध्यमिक शिक्षकों को 5200-20200 वेतनमान में 01 जुलाई, 2015 से 5200 का बेसिक वेतन देय होगा, परंतु ग्रेड पे देय नहीं होगा। अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों को



प्रशिक्षित होने के उपरांत अनुशंसित वेतनमान का ग्रेड पे देय होगा। पूर्व में की गयी सेवा के लिए प्रत्येक तीन वर्ष की सेवा के लिए एक वार्षिक वेतन वृद्धि तीन प्रतिशत की दर से देय होगी।

2.5 प्रशिक्षित एवं अप्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों को समय-समय पर राज्य सरकार के कर्मियों के अनुरूप घोषित महंगाई भत्ता, चिकित्सा भत्ता, मकान किराया भत्ता एवं देय वार्षिक वेतन वृद्धि देय होगी।

2.6 अप्रशिक्षित प्रारंभिक, माध्यमिक एवं उच्च माध्यमिक, शिक्षकों को 01 जुलाई 2015 को देय वेतन में कम से कम न्यूनतम 20 प्रतिशत की वृद्धि की जायेगी। जिन मामलों में 20 प्रतिशत से कम वृद्धि निर्धारित होगी, वैसे मामलों में 20 प्रतिशत तक वृद्धि करने के लिए 100 के गुणक में राशि जोड़ी जायेगी, जिसे वैयक्तिक वेतन माना जायेगा। वैयक्तिक वेतन पर महंगाई भत्ता देय नहीं होगा।

2.7 अप्रशिक्षित प्रारंभिक शिक्षक (स्नातक ग्रेड) एवं अप्रशिक्षित माध्यमिक शिक्षकों को विशेष भत्ता के रूप में 1500 रुपये की राशि प्रतिमाह दी जायेगी, जिसपर महंगाई भत्ता देय नहीं होगा। यह राशि इस उद्देश्य से दी जा रही है कि प्राथमिक, प्रखंड शिक्षक, माध्यमिक एवं उच्च माध्यमिक शिक्षक के वेतन में पूर्व की भांति अन्तर रहे।

2.8 नियोजित एवं भविष्य में नियोजित प्रशिक्षित प्रारंभिक, माध्यमिक, उच्च माध्यमिक शिक्षकों एवं पुस्तकालयाध्यक्षों को वेतनमान के साथ ग्रेड पे की देयता उनकी सेवा के दो वर्ष पूरा होने के उपरांत देय होगी। दो वर्ष की कालाविध में इन्हें अप्रशिक्षित प्रारंभिक, अप्रशिक्षित माध्यमिक, अप्रशिक्षित उच्च माध्यमिक शिक्षकों के अनुरूप वेतनमान देय होगा।

15. The present writ petition was heard on several dates and to clarify the above Resolution, learned Advocate General and the Additional Chief Secretary are present before the Court. It was noticed in course of hearing in the present writ petition and other writ petitions where also the Resolution No. 1530 dated 11.08.2015 in question in respect of Elementary and Middle School don't find reference of Grade Pay applicable to the teachers of the Middle School or Elementary School which is contrary to the Sub Clause (ii) of Clause (1) of the Notification No. 215 dated 23.08.2010 issued by the NCTE. The Notification is mandatorily required to be followed by giving benefit of the Resolution dated 11.08.2015 in respect of those



teachers of Middle School and Elementary School who were appointed under Rules, 2006, 2012 and 2020 and not given effect by their appointing units. Sub Clause (ii) of Clause (1) of the Notification No. 215 dated 23.08.2010 issued by the NCTE with regard to qualification of Class VI to VIII are reproduced hereinafter:

1. Minimum Qualification

(ii) Classes VI-VIII

(a) BA/B.Sc and 2-year Diploma in Elementary Education (by whatever name known)

OR

BA/B.Sc. with at least 50% marks and 1-year Bachelor in Education (B. Ed)

OR

BA/B.Sc. with at least 45% marks and 1-year Bachelor in Education (B. Ed), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B. El. Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year BA/B.Sc. Ed or B.A. Ed./BSc. Ed.

OR

BA/B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

16. Learned Advocate General in this view informs that necessary steps to rectify will be taken by the Additional Chief Secretary so that the teachers of Middle School or Elementary School who are also entitled for graduate trained grade pay, if not paid for any valid reason, will be treated



equally and for them necessary amendment or rectification will be made in the Notification contained in Resolution No. 1530 dated 11.08.2015 to avoid discrimination, if any.

17. Be that as it may be, in the facts of the present case, Vide Resolution No. 1530 dated 11.08.2015, Grade Pay was made applicable to the trained teachers irrespective of the Classes in which they were appointed by different appointing units.

18. The Grade Pay had come to an end with effect from 01.01.2016 as a result of 7th Pay Commission. Pay Matrix introduced a simplified, transparent and more efficient system for managing salaries and pension. It merged pay band and grade pay into a single unified level eliminating discrepancies.

19. It has been clarified by learned Advocate General that the petitioner has not been discriminated in any manner rather the Resolution is beneficial in nature irrespective of their appointment as per Rules, 2006. He further explained that the mechanism of giving the benefit of grade pay to the teachers from the date of their appointment subject to *kalavadhi* of two years to all the Niyojit Teachers is not discriminatory in any manner.

20. In the present case, the petitioner who was appointed in the year 2019 has already been granted the benefit



of grade pay in Level 4, Index – 1 in terms of the Clause 2.8 of the Resolution No. 1530 dated 11.08.2015, which prescribes two years of *Kalavadhi* from the date of appointment i.e. 10.04.2019. The case of the petitioner is covered by a Division Bench Judgment of this Court **vide Judgment dated 10.08.2023 passed in C.W.J.C. No. 2417 of 2022 (Rajanish Kumar Mishra & Ors. Vs. The State of Bihar & Ors.)**, wherein the Division Bench has held the *kalavadhi* for a period of two years from the date of initial appointment to be valid. Therefore, no interference can be made by this Court in this regard.

21. Clause 2.8 of the Resolution No. 1530 dated 11.08.2015 prescribes *Kalavadhi* for a period of two years for granting Grade Pay in accordance with the qualification and entitlement which is entirely in domain of the State Government to include such condition which is subject to *Kalavadhi* of two years to the eligible teachers. The Resolution dated 11.08.2015 cannot be said to be in violation of the Rules framed under Article 309 of the Constitution and the same has been issued in exercise of the power conferred under Article 166 of the Constitution and challenge of the Clause 2.8 of the aforesaid Resolution on the point of discrimination is rejected in the case of the petitioner, who has been appointed after coming into



force of the said Resolution.

22. The petitioner who is a 10+2 teacher, if finds that, she is aggrieved in any other manner may avail remedy before the appropriate authority for considering her grievance in accordance with law.

23. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.05.2025
Transmission Date	N.A.

