

(2011) 09 PAT CK 0097

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6985 of 1997, Civil Writ Jurisdiction Case No. 11472 of 2000, Civil Writ Jurisdiction Case No. 1722 of 2001, Civil Writ Jurisdiction Case No. 16129 of 2001, Civil Writ Jurisdiction Case No. 14814 of 2001, Civil Writ Jurisd

Bindeshwari Singh and
Others

APPELLANT

Vs

The State Of Bihar and
Others

RESPONDENT

Date of Decision: Sept. 26, 2011

Final Decision: Dismissed

Judgement

Shivaji Pandey, J.

In all these cases, the petitioners are physical trained teachers in different Middle Schools. They have filed these writ petitions in their individual as well as in representative capacity. In all the writ petitions, they have claimed matric trained scale as the other teachers of the same school who are educational trained teachers (B.Ed.degree) teaching other subject are getting matric trained scale. In all the cases common point involved is as to whether the physical trained teachers would be entitled to matric trained scale, although they are physical teachers but they do not have qualification of training in education (B.Ed.degree).

2. In all the cases, common facts are, petitioners and similarly situated persons have got the physical training from the Govt. Physical Training Colleges in the State of Bihar or outside the State of Bihar. The Bihar School Examination Board used to grant two types of certificates, namely, (i) Certificates in physical education, required qualification being matric, and (ii) Diploma in physical education, required minimum qualification being graduate, either in Arts or in Science. In the High Level Committee meeting dated 28th October 1980, it was decided to reserve 20 per cent post for those who obtained C.P.Ed. training and from next year, 10 per cent post would be reserved against newly created post for physical trained candidates for being appointed in the elementary schools. The Government of Bihar, vide its letter No.3/0-15-033/90 dated 25th February 1982, directed

for reservation of 25 per cent for diploma holders and 75 per cent for physical training certificate holders. It has further been averred that the petitioners against the advertisement of the year 1982-83 having requisite qualification and after going through the process of selection were appointed as physical trained teachers in the Elementary schools and they have been grant of matric untrained scale though were entitled to Matric trained scale. The petitioners made representation for granting matric trained scale claiming that the teachers who were teaching other subjects having training, have been granted matric trained scale, whereas they have been deprived of the same. They have claimed that they were appointed against the sanctioned post and are equal to trained teachers for all purposes and the Government has sanctioned the scale of trained teachers. It has further been stated that apart from imparting physical training, they are required to teach the students in other subjects also and they are required to be on duty, right from 10:30 A.M. to 4:00 P.M. on each and every day. When the petitioners were not granted the said benefit, in that circumstances they have filed these writ petitions in individual as well as in a representative capacity claiming the relief for themselves and also for similarly situated persons.

3. The State has filed counter affidavit and denied the claim of the writ petitioners claiming that the petitioners do not possess the qualification which is required for matric trained scale. The State has taken the stand that the trained teachers in physical education will not be entitled to benefit of matric trained scale until they acquire the requisite qualification, namely, Bachelor of Education (B.Ed.).

4. In course of argument, counsel for the petitioner has heavily relied on letter no. 885 dated 29th November 1980, claiming that teachers in physical education in Elementary Schools are entitled to Matric trained scale. It has further been argued that persons having the same qualification, appointed in secondary schools or basic schools are treated equal to the other trained teachers and accordingly, they are paid the trained scale, whereas in the elementary schools, teachers having physical training are being deprived of the matric trained scale.

5. The petitioners have argued that the teachers who are working in the High Schools having the same qualification as that of the petitioners are getting the trained scale whereas the petitioners have been discriminated. It is noted that though the argument has been made on discrimination but in the writ petition, there is no foundational fact to support the aforesaid contention. In this view of the matter, it is not possible to adjudicate the point of discrimination. The Hon"ble Supreme Court has repeatedly held that the Court may refuse to decide an issue where necessary foundational facts in issue are absent and held that in writ petitions it is required that the party who raising an issue must plead foundational facts as well as proof to substantiate the case and in absence of the same, the court will refuse to take cognizance of the same. In this context, the following judgments are relevant:

[Bharat Singh and Others Vs. State of Haryana and Others](#), (Para-13) [Yash Ahuja and Others Vs. Medical Council of India and Others](#), (Para - 78 to 80) [Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others](#), and others.(Para-69, 70, 74)

6. On behalf of petitioners, reliance was placed upon the judgment in C.W.J.C.No. 8481 of 1990 (Jagada Nand Singh and others vs. State of Bihar) (Annexure-4 to the writ petition). In that case, Hon"ble single Judge allowed the writ petition and directed to pay matric trained scale from the initial date of appointment including arrears.

7. The Hon"ble single Judge decided the aforesaid case without counter affidavit and the relevant notifications were not brought to the notice of the Hon"ble single Judge. Similar matter came up for consideration before this Court in C.W.J.C.No. 6947 of 1994 [Binod Kumar Singh and Others Vs. The State of Bihar and Others](#), In that case also the point was raised, as to whether the Assistant Teachers having physical education would get the matric trained scale? In the aforesaid case also, the point was raised before the Hon"ble single Judge that persons having same qualification appointed in the secondary school were being paid trained scale whereas the petitioners having the same qualification were being treated differently and they were being deprived of the scale of matric trained scale. The Hon"ble single Judge while deciding the case has noticed the rules, regulation and circulars and held that rule, regulation and circular applicable to secondary schools are not applicable to the elementary school. It was noticed that while in the secondary schools there is subject-wise appointment and physical education being one of the subjects, there is a provision for appointment of physical trained teachers whereas in the elementary schools, teachers are to teach all subjects. There is no such provision for appointment of teachers in a particular subject, including physical education in the elementary schools. The Hon"ble single Judge has held that the teachers in the secondary schools constitute a different class than that of the teachers of the elementary schools and both cannot be treated at par with each other. The Hon"ble single Judge considering all the circulars and notifications held that teachers having been trained in physical education will be reckoned to be equivalent to matric trained teachers but they will not be entitled to the benefit of matric trained scale unless they acquire the requisite qualification, namely, Bachelor of Education. While deciding the case, the Hon"ble single Judge has, for a limited purpose, also relied on the judgment decided by a Division Bench in the case of [Kumud Kumari Srivastava and Others Vs. The State of Bihar and Others](#), (This case is related to Project School). The Division Bench while deciding that case has observed as follows:

The petitioner has a certificate/degree in physical training and on that basis tries to present herself as possessing the minimum qualification of "trained graduate". The contention is wholly untenable. In the light of what has been stated above, Education is altogether a different subject than physical training and what is required by way of minimum qualification is a degree of Bachelor of Education and any certificate or degree in physical training. Hence, any one possessing any certificate or degree in physical

training cannot claim to fulfil the minimum qualification

The learned single Judge finally decided that teachers in physical education not having requisite qualification of diploma or degree in education cannot be said to be a trained teachers and are not entitled to scale of trained teacher until they acquire the requisite qualification.

8. The judgment in the case of Binod Kumar Singh (supra) was challenged before a Division Bench in L.P.A. No. 682 of 1995 (Tej Narayan Pathak and others vs. State of Bihar) and the principles enunciated by the single Judge were accepted by the Division Bench. In similar facts and circumstances, similar matter again came up before this Court, in C.W.J.C.No. 3175 of 2004 (Bachcha Nath Jha and others v. State of Bihar and others). In that case also the petitioners, physical trained teachers in the middle schools having the qualification of training physical education but not possessing the requisite certificate, diploma or degree in education were claiming Matric Trained scale. Following the judgment in the case of Binod Kumar Singh (supra), their similar was rejected. In this case it was brought to the notice of the Court that certain teachers being trained only in physical education were paid matric trained scale. The Court took serious view of the matter and asked the learned counsel for the State to file supplementary counter affidavit about the status of payment of teachers and in pursuance thereof, the learned counsel for the State filed supplementary counter affidavit and brought on the record that five Head Masters who were found to have been making payment of salary to the teachers who were not entitled to get such salary on account of their being untrained and not possessing requisite qualification, have been put under suspension. The Hon'ble single Judge directed the Principal Secretary in Human Resources Development Department to ensure that suitable disciplinary action is taken against the aforesaid five Head Masters who had allowed the salary of matric trained scale to the assistant teachers who were only physical trained. After considering the facts and circumstances, the Court rejected the claim of petitioners of that case and held that the teachers in physical education are required to possess the diploma and/or degree in education and in absence thereof they would not be treated as trained teachers in education and are not entitled to Matric Trained scale in Elementary or Middle Schools. This judgment has been approved by Division Bench in L.P.A.No. 726 of 2008 (Bachha Nah Jha vs. state).

9. The judgment in Jagdanand Singh's case (supra) cannot be said to be a binding precedent on the point raised while the subsequent reported judgments in the case of Binod Kumar Singh's case (supra) has considered every aspect of the matter and finally came to the conclusion that Assistant teacher having qualification of physical education cannot be treated at par with other teachers having B.Ed. qualification. This judgment has considered all the circulars occupying the field and the same was approved by the Division Bench. Another Division Bench judgment in L.P.A. No. 726 of 2008 has also taken the same view. Hence, we have no option but to hold that judgment in the case of Jagda Nand Singh cannot be followed as a precedent. In support, the following judgment may be referred- [Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and](#)

[Pharmaceuticals Ltd.](#), (Para-41) (Indian Drugs & Pharmaceutical Ltd. Vs. Workmen, Inan Drugs & Pharmaceutical (Ltd)).

10. The learned counsel for the petitioners has relied on a new Rules, namely, "Special Elementary Teachers" Appointment Rules, 2010" to show that the State of Bihar by this new Rules has decided to pay the trained scale to the teachers having the certificate of C.P.Ed. or having training of one year of C.P.Ed/D.P.Ed. It will be relevant to state that 2010 Rules will not be applicable to the case of present petitioners. Moreover, the definition clause 2(iv) defines "training" to include Teachers having the certificate of physical education of two years and the training of one year from the Institute recognized by the State of Bihar for limited purpose of requisite qualification for being appointed as teachers, but this provision in Rule 2(iv) or those in Rule 3(iv) do not stipulate that the teachers having qualification of physical training will also be entitled to matric trained scale. These Rules were framed for a special drive for appointment of teachers in view of directions of Hon"ble Supreme Court in Contempt Petition No. 297/2007 as one time appointment.

11. In view of the facts and circumstances of the case, looking to the consistent views of this Court on the relevant issue and observing principle of stare decisis (abide by the decisions, to stand by decided cases, to uphold precedents, to maintain former adjudications), there is no option but to follow the judgment reported in Binod Singh's case (supra) approved by the Division Bench of this Court. It is, therefore, held that the primary teachers having training only in physical education and not having the qualification of B.Ed. are not entitled to matric trained scale. 12. Accordingly, all the writ petitions are dismissed.

13. There will be no order as to costs.

Shiva Kirti Singh, J.

I agree.