

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 59 OF 2010**

Nesar Ahmed & Anr.

..... Petitioner(s)

Versus

State of Jharkhand & Ors.

.....Respondent(s)

With

**W.P. (Civil) No. 173 of 2010;
W.P. (Civil) No. 39 of 2011**

J U D G M E N T

A.K. SIKRI, J.

1.All the petitioners, in these three Writ Petitions filed under Article 32 of the Constitution of India, are similarly situated. After getting the requisite training they have acquired the nomenclature of 'trained teachers'. They seek an appointments in the schools run by the Respondent-State of Jharkhand as assistant teachers. Some IAs filed by several similarly situated teachers for impleadment and seeking the same relief. It is for this reason that these petitions were conjointly heard.

2.The exact prayer, contained in Writ Petition (Civil) No. 173 of 2010, would give a glimpse of the nature of the case set up by these petitioners and the precise relief which these petitioners pray for. This prayer reads as under:

“It is, therefore, respectfully prayed that Your Lordships may graciously be pleased to:

i)Issue a writ, order or direction directing the respondents more particularly Respondent Nos. 1 to 3 to appoint the petitioners and similarly circumstanced Trained Teachers in order of seniority.

ii)Issue a writ, order or direction directing the respondents and more particularly the State of Jharkhand (Respondent Nos. 1 to 3) to protect fundamental right of Primary Education to the children of State of Jharkhand by appointing the Trained Teachers available in the Jharkhand State on the sanctioned vacant posts of Assistant Teachers.

iii)Pass such other or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

The background in which these petitions have come to be filed is somewhat detailed one with chequered history, riddled with previous litigation benefit whereof the petitioners are seeking. However, we would

endeavour to traverse through these events in as simple a manner as possible.

3. As is well known, the State of Jharkhand was created in the year 2000. Before that it was a part of the State of Bihar. All these petitioners belong to undivided Bihar vintage. They claim that they are qualified and trained teachers who acquired requisite qualification and underwent necessary training and thus became eligible to be considered for appointment as primary teachers in the schools run by the State Government as per the provisions of the Extant Rules on the subject. However, even when the Government was legally bound to appoint only the trained teachers, on the basis of an advertisement issued on 6.10.1991 by the Government of Bihar for filling up of 25,000 posts of Assistant Teachers, the State recruited 17,281 untrained teachers out of total appointments of 19,272 Assistant Teachers made in the said recruitment process. This selection was challenged by some persons by filing writ petition in the High Court of Judicature at Patna which was decided on 26.9.1996. The High Court did not quash the appointments already made, though at the same time it held that the State would not force a person to confine his application to a particular district. Against this order, Special Leave Petition No. 23187 of

1996 was preferred before this Court. In those proceedings an affidavit dated 14.8.1997 was filed by the Deputy Superintendent of Education, Bihar Government agreeing to appoint trained teacher against existing vacancies. Having regard to the averments made in the said affidavit, SLP was disposed of vide order dated 5.9.1997. This case is known as *Ram Vinay Kumar & Ors. v. State of Bihar and Ors. (1998) 9 SCC 227*. The exact directions regarding appointment to the post of Assistant Teachers which were given by this Court are the following:

“(i) The Commission shall conduct a special selection for the purpose of appointment of these unfilled posts from amongst applicants who had submitted their applications.

(ii) The selection shall be confined to applicants possessing teacher's training/ qualification obtained from government/ private teacher's training institutions.

(iii) The selection shall be made by holding a preliminary test and a written examination of the candidates who qualify in the preliminary test.

(iv) In case the number of persons found suitable for appointment in such special selection exceeds the number of posts for which recruitment was to be made on the basis of advertisement dated 6.10.1991, the surplus number of candidates who have been found suitable for the appointment would be justified against posts to be filled on the basis of subsequent selection.

(v)The special selection which is to be conducted in pursuance of these directions shall be completed by the Commission by 31.1.1997.”

4. In nut-shell, the direction was to conduct a special selection for filling up of the unfilled posts from amongst the applicants who had already submitted their applications pursuant to the advertisement issued and it was to be confined to those applicants who were possessing teachers training/ qualification obtained from Government/ private teachers' training institution i.e. from amongst the trained teachers. As per the petitioners as on 30.9.1993 there were about 45,000 vacancies in as much as against total post of 2,09,981, number of teachers working were 1,54,751. Furthermore, in next three years about 18,431 teachers were expected to retire. Therefore, projected vacancies were approximately 63,000. On the creation of the State of Jharkhand in terms of Bihar Reorganisation Act, 2000 proportionate vacancies i.e. one-third came to the share of State of Jharkhand which would mean that 21,000 vacancies were available on the date on which this State was created.

5. It is stated by the petitioners that for almost 7 years from the date of directions given in Ram Vinay Kumar's Case, no action was taken. It forced

certain sections of trained teachers to approach the Patna High Court by way of several Writ Petitions. All these Writ Petitions were heard together with leading case known as *Nand Kishore Ojha & Ors. v. State of Bihar and Ors.* (CWJC 13246/2003). These Writ Petitions were allowed by the Patna High Court vide judgment dated 1.7.2004. In the said judgment it was *inter alia* noted that there were number of unfilled vacancies because of which primary schools were lying empty. The High Court deprecated the inaction on the part of the Government of Bihar in not implementing the judgment of this Court in Ram Vinay Kumar's Case, on one pretext or the other, thereby creating a human rights problem in denying a young generation its right to basic education. According to the High Court, the solution was simple viz. to follow the judgment of this Court in Ram Vinay Kumar's case from where the circumstances has been left out. The High Court also calculated the number of existing vacancies in the manner already pointed out above. On this basis direction was given to carry out the selection process as per the mandate of this Court contained in the case of Ram Vinay Kumar.

6. The State of Bihar challenged the aforesaid judgment of High Court by filing Special Leave Petitions in this Court. However, thereafter affidavit

dated 18.1.2006 was filed by the Commissioner-cum-Secretary, Education Department, Government of Bihar alongwith an application for withdrawal of those Special Leave Petitions. In the affidavit an undertaking was given that only trained teachers were appointed as Assistant teachers in the State of Bihar. Further owing to the reason that the number of available teachers in the State of Bihar were less than the available sanctioned post and no test for selection was required. On the basis of this affidavit, orders dated 23.1.2006 were passed permitting the Government to withdraw the Special Leave Petitions.

7. When the undertaking given in the said affidavit was not implemented immediately thereafter, some persons filed Contempt Petition No. 207 of 2006 in this Court which was disposed of by orders dated 19.3.2007 with a direction to the State of Bihar to implement its undertaking.

Operative part of the said order reads as under:

“In paragraph 17 of the said affidavit in reply dated 7.2.2007, it is stated that priority has been given to trained teachers in appointment and only if trained teachers are not available in sufficient numbers, the case of untrained teachers are considered by the concerned by the Panchayati Raj Institute (PRI) to achieve the constitutional goal of free and

compulsory education for children from age 6-14, and in this regard the State of Bihar and other answering respondents are complying with the orders of the High Court and also of this Court. A rejoinder has also been filed by the petitioner disputing the statements made by the State of Bihar in the affidavit dated 7.2.2007.

In view of the categorical statement now made that the priority will be given to the trained teachers in appointment and also the clarification made in paragraphs 19 to 222 of aforesaid affidavit dated 7.2.2007, we direct the State of Bihar to implement the undertaking given by the State of Bihar earlier and also now by the present affidavit dated 7.2.2007 in letter and spirit by appointing the trained teachers on priority basis.

The Contempt Petition is disposed of accordingly.”

8. Still this undertaking was not complied with which led to filing of another Contempt Petition No. 297 of 2007 titled *Nand Kishore Ojha v. Anjani Kumar Singh* in which following interim orders dated 9.12.2009 were passed.

“Accordingly, without issuing a Rule of Contempt, we direct that the 34,540 vacancies shown as available in the advertisement published in December, 2003, be filled up from amongst the trained teachers who are available, in order of seniority. As indicated above, this is to be done on a one-time basis and must not be taken as the regular practice to be followed.

Let the Contempt Petition be adjourned for a further period of six weeks to enable the State Government to implement this order and to submit a report on the next date as to the result of the discussions held between the petitioner and the

concerned authorities.”

9. Thereafter, the State of Bihar filled up the vacant post of Assistant Teachers in terms of its undertaking thereby recruiting from amongst the trained teachers who had applied earlier, pursuant to the advertisement given in the year 1991. Many had become over aged in the meantime, and age relaxation was given in their cases.

10. What is narrated above is the history of litigation in the State of Bihar. In so far as State of Jharkhand is concerned (respondent herein), as already pointed out above, approximately 21,000 vacant post were transferred to this State. The respondent advertised these vacancies in the year 2002 by giving relaxation in age by 5 years only. Because of this reason many trained teachers, in which category of the petitioners include, could not be appointed as Assistant Teachers, being overage. The petitioners, in this backdrop, contend that they are entitled to the benefit of Ram Vinay Kumar's judgment of this Court rendered much before the creation of the Jharkhand State and applied to the erstwhile unified Bihar and the judgment be implemented in their case as well as it has happened qua the trained teachers in State of Bihar in the manner explained above. We may point out

at this stage that respondent State is making appointment only from amongst trained teachers. The problem, however, has arisen because of the reason that these petitioners have become over aged and wanted total age relaxation. To put it, succinctly they are claiming parity with their counterparts in the State of Bihar and submitting that when those teachers were appointed by giving age relaxation, there is no reason to deprive the petitioners from the same treatment which would, otherwise, be discriminatory and violative of Article 14 of the Constitution.

11. The petitioners have pointed out that the respondent-State had set up a Committee in the year 2001 for implementation of the judgment and even the said Committee in its report dated 31.5.2001 recommended that all vacancies in the State of Jharkhand be filled with trained teachers within two months. The operative portion of the said recommendation reads as under:

“Since the Government at its own level have imparted teacher training to the thousands and the trained teachers were in the hope for the two decades that they will be appointed as a teacher. It is totally unjustified and in-human that the Government appoints untrained persons and thereby ruined the future of trained teachers. Therefore, the committee here by recommends that all the vacancies in the State of Jharkhand be fulfill with trained teachers within 2 months. If

number of trained teachers exceeds the number of vacancies, then the vacancies be fulfilled on the basis of seniority of the trained teachers i.e. in the order of their getting training. Thereafter, the trained teachers remained unemployed be appointed against subsequent vacancies. In the appointment process the rule of age limit be diluted because for the two decades the trained teachers are waiting appointments and due to this reason they crossed their age limit without any fault on their part. The other untrained persons may be employed only after accommodating all trained teachers. The Government should take policy decision for the future if it has to appoint trained teachers to impart training to the persons after getting them selected by the Commission. However, the committee is of the view that appointment of trained teachers would not burden state treasury, whereas imparting training to the persons after getting them selected on salary cannot said to be a reasonable course. Hon'ble Supreme Court of India and expert committee has also directed to appoint the trained teachers.”

12.The aforesaid arguments of the petitioner may appear to be attractive in first blush. After all, judgment in Ram Vinay Kumar's case was rendered by this Court for unified Bihar. This judgment, after the bifurcation of the State into two, has been implemented in the State of Bihar irrespective of the fact that those trained teachers in State of Bihar had become overage, they have been given the appointments. Therefore, the same treatment could have been accorded to the petitioners as well who are similarly situated and by quirk of fate became the residents/ domiciles of State of Jharkhand.

However, these observations would be valid when we see only one side of the coin. It is equally necessary to take notice of the developments which happened in State of Jharkhand, after its creation. In order to find out as to whether those events would in any way alter the situation thereby making it to be a different case.

13. Mr. Amarendra Sharan, learned Senior Counsel appearing for the State submitted that after the creation of Respondent-State, it framed its own rules known as Jharkhand Primary School Appointment Rules, 2002 (in short 'Rules 2002'). These Rules, inter alia, prescribed teachers eligibility test and the passing of this test is a principle condition for appointment. Rule 4 of the said Rules provided a lower and upper age limit for appearing in the examination to be held as part of the selection process of teachers. But a concession was given by the said Rule to the effect that there will be no such limitation on the upper age for the first examination to be held. This was on the basis that for a number of years, no examination had been held or selection made and all those who had acquired Teachers' Training should have an opportunity to appear in the first examination. It was intended to be a one time concession. It meant that even a person who would attain the age of superannuation within six months of being selected or appointed, could

appear in the examination. Manifest intention of this Rule was to give benefit to persons like the petitioners herein. Rule 8 thereof provided that the knowledge level for the written examination for selection would be the middle level examination.

14. In spite of this step taken by the State, the legal events were destined to take difficult course altogether. It so happened that the non-fixation of an upper age limit for candidates and fixing the knowledge at middle level academic standard was challenged before the High Court in W.P. (C) No. 5170 of 2002 and W.P. (C) No. 6135 of 2002. These Writ Petitions were allowed and the High Court struck down the unbridled concessions given regarding the upper age limit and the fixation of middle level as the standard for the written test to be conducted. The High Court declared these provisions void on the ground the non-prescription of an upper age limit and the fixation of middle level examination knowledge for the candidates are arbitrary, suffer from non-application of mind and not based on any intelligible differentia having nexus with the object sought to be achieved. The High Court thus found both those provisions violative of Article 14 of the Constitution of India, though the said Article was not specifically referred to. The court also declared that the said two stipulations were

against the public interest. For want of further challenge, this decision of the Division Bench became final. The Legislature, thereupon, amended Rule 4(d) and Rule 8(d). The amended Rules provided a lower and an upper age limit and for the first examination provided for relaxation of age by five years. By Rule 8(d), it enhanced the standard of examination of Primary Teachers Training Examination. In August 2002, first advertisement was issued for making recruitments followed by supplementary/ second advertisement dated 21.4.2003 on the basis of these amend Rules. Even the amend Rules 4(d) & 8(d) were challenged in numerous Writ Petitions, which came to be filed in the Jharkhand High Court with lead matter in W.P. (C) No. 2566 of 2003 titled *Jharkhand Rajye Berojgar Prathmik Prashikshit Sikshak Sangh & Ors. v. State of Jharkhand & Ors.* The reliefs sought for in that Writ Petition were the following:

(i) For quashing the Rule 4(d) and 8(d) of the Jharkhand Primary School Appointment Rules 2002 and the amended Rules of 2003 as notified through notification dated 1.7.2002 and the notification through 6.3.2003 (as contained in Annexure-1 & 2 of the writ application)

(ii) For directing the respondents to hold selection of primary schools teacher by taking examination/ selection test of matriculation and its equivalent standard.

(iii) For accommodation of all the trained teachers by the

respondents up to a reasonable age by giving them opportunity of employment and their appointment as Primary School Teachers to be appointed by the State Government by relaxing the age of a reasonable extent.

(iv) For lifting the one chance bar for appointment of primary school teachers from the category of trained teacher candidates.

(v) For any other appropriate relief (s) to which the petitioners are found entitled in law and equity.”

15. In essence, the petitioners challenged amended Rule 4(d) and Rule 8(d) of the Rules, 2002 claiming that these provisions were not only unconstitutional but in violation of the directions given in the earlier judgment. It was specifically pleaded that there could not have been upper age limit for appointment of trained teacher. Though the applications were invited from only trained teachers but age relaxation upto 5 years only was given. This was challenged as arbitrary, malafide and against public interest. In this Writ Petition interim orders dated 13.5.2003 were passed by the High Court allowing the petitioners to appear on the examination, which was scheduled to be held on 27.5.2003.

16. Interestingly, one PIL was also filed in the form of W.P. (PIL) No. 2769 of 2003 wherein the petitioner had claimed that no concession was

required to be given to these persons, in terms of age relaxation or otherwise and the recruitment be made strictly in accordance with the extant Rules.

17. All these Writ Petitions were heard together and disposed of by passing orders dated 29.9.2003. In the said judgment various other issues regarding composition of State Public Service Commission were touched and considered as well. We are eschewing discussion on those aspects as that is not relevant for our purpose. In so far as the Writ Petitions which were filed certain trained teachers and their associations (to which category the present petitioners fall and most of these petitioners were party to those Writ Petitions) they were dismissed by the High Court with the following observations:

“In one of the writ petitions, this court issued a direction that the three writ petitioners in that writ petition, would be permitted provisionally to take the examination or to writ the examination even if they did not fulfil the age requirement or age qualification, subject to the result of the writ petition. It appears that some unruly elements on the strength of that order forced some of the officers or the authorities to issue them hall tickets to appear in the examination even though they were over aged and did not qualify as per the amended rule issued pursuant to the earlier decision of the Division Bench. It is made clear that those who did not possess the requisite age qualification as per the amended Rule 4(d) of the Rules, even if they have written the examinations, would not be considered for recommendation, selection or

appointment by the Commission or by the Government appearance of those who did not possess the requisite qualifications or the age qualification, will be ignored by all those concerned with the process of selection and appointment.

In the result, the writ petitions, other than W.P. (PIL) No. 2769 of 2003 are dismissed. W.P. (PIL) No. 2769 of 2003 is partly allowed with the directions to the State of State of Jharkhand and the State Public Service Commission not to proceed with the recommendatory process until the full State Public Service Commission as envisaged by the Jharkhand Public Service Commission (Conditions of Service) Regulations, 2000 comes into existence. It is made clear that the steps so far taken and the examinations conducted will be treated as valid. There will be no order as to costs.”

18. The High Court thus refused to extend the benefit of total age relaxation but limited it upto 5 years, as envisaged in the Rule. No further challenge was laid to that judgment allowing it to attain finality. Appointments were made in accordance with the Rules, 2002. Thereafter another advertisement was issued in the year 2008 further and further appointments were made on the basis thereof.

19. From the above, the position which prevails in the State of Jharkhand, can be summarised as below:

(i) After the constitution of the formation of the State of Jharkhand it has framed its own Rules for recruitment to the post of Assistant/ primary teachers.

(ii) As per these Rules the appointment is to be made only from amongst the trained teachers.

(iii) In the recruitment processes undertaken up to now, the state has made the appointments strictly in accordance with the Rules and after following the due selection procedure from amongst the trained teachers.

(iv) In the Rules which were framed initially, one time age relaxation was provided with the provision that there would not be any upper age limit. However, that Rule was challenged before the High Court and High Court struck down the said Rule as un-constitutional. Complying with the directions contained in the said judgment Rules were amended and the amended Rules provide for relaxation upto 5 years.

(v) When Selection process commenced in the year 2002 -2003 by issuing advertisement these very teachers (namely the petitioners) through their associations etc. filed writ petitions claiming complete age relaxation instead of relaxation only upto 5 years of age. However, these writ petitions were dismissed by the High Court vide judgment dated 29.9.2003. This judgment has also attained finality.

20. In this scenario it would be difficult to give any relief to the petitioners herein. In fact, what the petitioners are demanding now was sought to be given by the State in the form of un-amended Rule 4 by providing one time relaxation in upper age limit. However, that Rule has been struck down as un-constitutional. Giving the relief claimed in these writ petitions would amount to negating the judgment of the High Court though

it has become final. Moreover, recruitments were made in the year 2003 wherein many such teachers participated. For last 10 years, the respondent is making the appointments of trained teachers and it is not the case of the petitioners that untrained teachers are appointed. Appointment are made by following the Recruitment Rules scrupulously. The Petitioners in these writ petition did not even disclose the facts pertaining to the two rounds of litigation in the High Court culminating into decision dated 29.9.2003 (reported as **2003(1) JLJR 322**). Only after the second recruitment process which was held in year 2008, present writ petitions were filed in the year 2010 or thereafter.

21. Having regard to the above it would not be permissible to the petitioners to compare their case with their counterparts in Bihar. As far as the counterparts in the State of Bihar are concerned they had filed writ petitions well in time i.e. way back in the year 2003 in Patna High Court wherein those persons succeeded. The Patna High Court allowed those writ petitions vide judgment dated 1.7.2004 directing the State of Bihar to implement the judgment in Ram Vinay Kumar's Case. In such circumstances this Court would not be inclined to grant any relief to the petitioners in these petitions filed under Article 32 of the Constitution, more so when it is

found that the respondent/ State of Jharkhand has taken steps in conformity with the statutory recruitment rules framed under proviso to Article 309 of the Constitution.

22. Finding no merits in these writ petitions, same are dismissed. All pending I.As also stand dismissed.

.....J.
[Surinder Singh Nijjar]

.....J.
[A.K. Sikri]

New Delhi
February 25, 2014

JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT