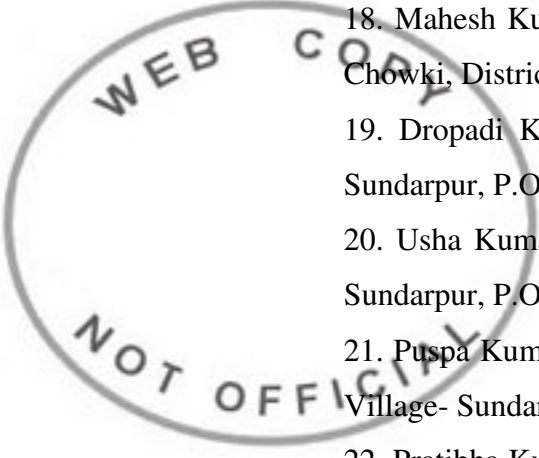


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19521 of 2013

- =====
1. Suresh Yadav S/O Late Rameshwar Yadav R/O Village- Rasulpur, P.O. Baha Chowki, P.S. Medni Chowki, District- Lakhisarai
 2. Parmeshwar Mahto S/O Late Mouji Mahto R/O Village- Rasulpur, P.O. Baha Chowki, P.S. Medni Chowki, District- Lakhisarai
 3. Arvind Kumar S/O Chhedi Prasad Singh R/O Village Konipar, P.O. Dighri, P.S. Surya Gaddha, District Lakhisarai
 4. Sudha Devi D/O Late Ramdas Mahato R/O Village- Rasulpur, P.O. Baha Chowki, P.S. Medni Chowki, District- Lakhisarai
 5. Kumari Indu Sinha D/O Sinheshwar Prasad Singh R/O Village- Rasulpur, P.O. Baha Chowki, P.S. Medni Chowki, District- Lakhisarai
 6. Uma Kumari D/O Brahmdeo Mahato, W/O Mahendra Kumar R/O Village Deogharha, P.O. Amarpur, District- Lakhisarai
 7. Malti Kumari D/O Ramdeo Mahato, W/O Ranjeet Kumar Ranjan R/O Village Deogharha, P.O. Amarpur, P.S. Medni Chowki, District- Lakhisarai
 8. Subhadra Kumari Sinha D/O Chhedi Mahato, W/O Bhubneshwar Prasad Singh R/O Village Konipar, P.O. Dighari, P.S. Suryagarha, District- Lakhisarai
 9. Kamli Kumari D/O Late Faujdari Prasad Mahato, W/O Anandi Mahto R/O Village Tarapur, P.O. Mustaphapur, District- Lakhisarai
 10. Mudhuri Lata D/O Mahendra Prasad Mahto R/O Village Basauni, P.O. Dharhara, P.S. Piribazar, District- Lakhisarai
 11. Kamini Kumari D/O Shravan Kumar Mandal R/O Village Basauni, P.O. Dharhara, District- Lakhisarai
 12. Nutan Patel D/O Brijnandan Prasad Singh R/O Village Bhirha, P.O. Amarpur, P.S. Medni Chowki, District- Lakhisarai
 13. Savitri Sinha D/O Parmanand Singh, W/O Rabindra Kumar Mahto R/O Village Basauni, P.O. Dharhara, P.S. Piribazar, District- Lakhisarai
 14. Abha Kumari D/O Bishnudeo Mahto W/O Anil Kumar Mehta R/O Village Garhi Vishanpur, P.O. Piribazar, District- Lakhisarai
 15. Manju Kumari D/O Bharat Kumar R/O Village Basauni, P.O. Dharhara, P.S. Piribazar, District- Lakhisarai
 16. Mira Kumari Sinha D/O Ramswarup Mahto R/O Village Bhirha, P.O. Amarpur, P.S. Medni Chowki, District- Lakhisarai

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17. Mahendra Kumar S/O Late Baneshwar Mahton R/O Village Deoghara, P.O. Amarapur, P.S. Medni Chowki, District- Lakhisarai
 18. Mahesh Kumar S/O Borhan Prasad Singh R/O Village Sundarpur, P.O.- Baha Chowki, District- Munger
 19. Dropadi Kumari D/O Kishun Mahto W/O Kusheshwar Mahto R/O Village Sundarpur, P.O. Baha Chowki, District- Munger
 20. Usha Kumari D/O Chandi Mahto, W/O Sri Radha Prasad Singh R/O Village Sundarpur, P.O. Baha Chowki, District- Munger
 21. Puspa Kumari D/O Sri Ishwari Prasad Singh, W/O Indradeo Prasad Singh R/O Village- Sundarpur P.O. Baha Chowki, District- Munger
 22. Pratibha Kumari D/O Saryag Sharma R/O Village- Halimpur (Naya Tola), P.O. Safiabab, P.S. Naya Ram Nagar, District- Munger
 23. Usha Kumari D/O Mohan Sharma W/O Kishore Prasad Sharma R/O At Maksuspur, P.O. Munger, P.S. Kasim Bazar, Munger, District- Munger
 24. Kusheshwar Mahto S/O Sri Chandi Mahto R/O Village Sundarpur, P.O. Baha Chowki, District- Munger
 25. Kumari Kabita Sinha D/O Sri Jagnath Prasad Singh R/O At + P.O. Sanvarsha Ghat, P.S. Chautham, District- Khagaria
 26. Anita Kumari D/O Sri Laxman Singh, W/O Sri Rajendra Kumar Rajesh R/O Village Sunderpur P.O. Baha Chowki, P.S. Dharhara, District- Munger
 27. Kumari Malti D/O Lalita Dev Prasad Singh, W/O Mahesh Kumar R/O Village Sunderpur P.O. Baha Chowki, P.S. Dharhara, District- Munger
 28. Pampam Kumari D/O Reshaw Pd. Mahto, W/O Pradip Singh R/O Village Hemjapur, P.O. Shivrund, District- Munger
 29. Sobha Kumari D/O Damodar Rajak, W/O Sri Krishna Kumar Rajak R/O At Belan Bazar Dhobi Tola, P.O. Munger, P.S. Kasim Bazar, District- Munger
 30. Bina Kumari D/O Soti Mahto R/O At- Postal Colony, P.O. Bhagalpur, District- Bhagalpur
 31. Sandhya Devi D/O Ragho Das, W/O Yogi Paswan R/O Village Bochahi, P.O. Kala Rampur
 32. Kishori Prasad Mehta S/O Hari Prasad Mehta R/O Village Maharana, P.O. + P.S. Dharhara, District- Munger
 33. Sanju Kumari D/O Late Sahdeo Mahto, W/O Sri Pashupati Mehta District- Munger
 34. Dropadi Kumari D/O Bindeshwari Prasad Singh, W/O Jai Prakash R/O Village

Maharana, P.O. + P.S. Dharhara, District- Munger

35. Malti Devi D/O Kokil Prasad Yadav R/O Village Nawlakha, P.O. Safiabab, District- Munger

36. Shayama Kumari D/O Brahmdeo Prasad Mahto, W/O Dashrath Prasad Mehta R/O Village Maharana P.O. + P.S. Dharhara, District- Munger

37. Madhu Kumari Sinha W/O Aditya Narayan Sinha R/O Village Deoghara, P.O.- Amarpur, District- Lakhisarai

38. Hiru Kumari D/O Kaushlesh Prasad R/O Village Gandhi Tola Rampur, P.O. Jamalpur, District- Munger

39. Premlata Kumari D/O Sri Darbari Mahto, W/O Chandra Shekhar Azad R/O Village Maharana, P.O. Dharhara, District- Munger

40. Premika Kumari D/O Nawal Kishore Singh, W/O Navin Kumar R/O Village + P.O. Mehus, P.S. Mehus, District- Sheikhpura

41. Bharat Kumar Roy S/O Late Ram Rud Roy R/O Village Kumarpur, P.O. Ghatwari, P.S. Dharhara, District- Munger

42. Nageshwar Sah S/O Late Mangal Sah R/O Village- Farda Jagdambapur, P.O.- Farda, District- Munger

43. Gauri Kumari D/O Sri Dukhan Sah, W/O Sri Ram Chandra Sah R/O At + P.O.- Itwa, District- Munger

44. Kavita Kumari D/O Late Nagina Prasad Yadav, W/O Kawaslendra Kr. Yadav R/O Mohalla- Mohanpur, P.O. Jamalpur, District- Munger

45. Sushila Kumari D/O Nand Lal Sahu R/O Village Mangarh, P.O. Dharhara, P.S. Dharhara, District- Munger

46. Sudha Kumari D/O Bisho Thakur, W/O Kailash Thakur R/O Topkhana Bazar, District- Munger

47. Manoj Kumar S/O Keshav Mahto R/O Village Hamjapur, P.O. Shivkund, P.S. Dharaha, District- Munger

48. Arti Kumari D/O Shiv Narayan Mahta, W/O Ramnath Mandal R/O Village Neerpur, P.O. Bariyarpur, District- Munger

49. Sanyukta Kumari D/O Kailash Mahto, W/O Prakash Singh R/O Village Chatti Lagma, P.O. Shivkund, P.S. Dharhara, District- Munger

50. Kamleshwari Singh S/O Late Mahabir Singh R/O Village Maharana, P.O. Dharhara, District- Munger

51. Renu Kumari Sahu D/O Jamuna Prasad Sahu, W/O Raj Kumar Sahu R/O Village Baderpur, P.O. Kajra, District- Lakhisarai

52. Abhilasha Kumari D/O Rambilash Yadav R/O At- Phulka Gumti, P.O. And
P.S.- Jamalpur, District- Munger

53. Babita Kumari D/O Chhedi Prasad Yadav R/O Vill.- Badhi Govindpur, P.O.
Sarobagh, Jamalpur, Distt.- Munger

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna
2. The Director, Primary Education, Govt. Of Bihar, Patna
3. The Secretary, Bihar Staff Selection Commission, Patna
4. Special Officer, Bihar Staff Selection Commission Veterinary College, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 19706 of 2013

Sanjay Kumar Ravidas S/O Late Munshi Ravidas, resident of village-Baksouti, P.S-
Govindpur, District- Navada.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna.
2. Bihar Staff Selection Commission through Its Member Secretary, Bihar Staff Selection Commission, Veterinary College Campus, Patna
3. Member Secretary, Bihar Staff Selection Commission, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 21601 of 2013

Sunita Rani Sinha, wife of Sri Lekha Prasad, resident of Village- Asha Nagar, P.O.-
Sohsarai, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Staff Selection Commission, Bihar, Patna through its Secretary.

.... Respondent/s

Appearance :

(In CWJC No. 19521 of 2013)

For the Petitioner/s : Mr. Navin Kumar, Advocate.
For the State : Mr. Sanjeev Kumar, AC to SC 1.
For the S.S.C. : Mr. S.S.Sundaram, Advocate.

(In CWJC No. 19706 of 2013)

For the Petitioner/s : Mr. Ram Chandra Singh, Advocate.
For the State : Mr. Sanjay Pandey, GP 22.
For the S.S.C. : Mr. S.S.Sundaram, Advocate.

(In CWJC No. 21601 of 2013)

For the Petitioner/s : Mr. Ram Chandra Singh, Advocate.

For the State : Mrs. Abhanjalli, AC to GP. 16.

For the S.S.C. : Mr. S.S.Sundaram, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

C.A.V. JUDGMENT

Date: 22-05-2015

Heard learned counsel for the parties.

2. All these three writ applications, involving same question with regard to delayed receipt of applications filed by the petitioner in response to the Advertisement No. 201/2010 for filling up the post of Assistant Teachers in the primary schools of the State of Bihar, have been heard together and are being disposed of by this common judgment.

Re. C.W.J.C. No. 19521 of 2013:

3. In this writ application, the 53 petitioners have moved this Court seeking a direction for appointment of the petitioners on the post of Assistant Teachers. All of them claimed to be having the requisite qualification as prescribed in the advertisement and it is their case that they had filed their applications within the prescribed period of time. In support of the said averments, they have also enclosed postal receipts of the registered/ speed post sent by them which are either in the date of 15.07.2010 or 16.07.2010, as contained in Annexure 1 series. One of the petitioners, namely, petitioner no. 3, Arvind Kumar, has also enclosed a letter of the Senior Superintendent of Post Office, Patna dated 09.05.2011 to establish that the registered

letter sent by him, bearing No. 4278 dated 15.07.2010, was delivered in the office of Bihar Staff Selection Commission (hereinafter referred to as 'the Commission') on 16.07.2010.

4. The further case is that when their names were not included in the panel, prepared by the Commission or by the Special Committee constituted by the Apex Court, they filed their representations and ultimately they have moved this Court in view of the observations made by the Apex Court in the order dated 18.07.2013 in SLP No. 26824 of 2012 and its analogous case.

5. This Court, on perusal of the materials on record, would firstly find that the petitioners have very conveniently suppressed the fact that the last date of receipt of applications was 19th July 2010. Clause 14 of the advertisement as with regard to the last date of filing of the applications, had read as follows:

14. अंतिम तिथि— भरा हुआ आवेदन पत्र केवल निबंधित डाक/स्पीड पोस्ट से इस प्रकार भेजें ताकि दिनांक 19.07.2010 को संध्या 6.00 बजे तक सचिव, बिहार कर्मचारी चयन आयोग, पो.—वेटनरी कॉलेज, पटना-800014 को अवश्य प्राप्त हो जाये। अन्य किसी भी माध्यम से भेजे गये आवेदन पत्र स्वीकार नहीं किये जायेंगे। निर्धारित अंतिम तिथि के बाद प्राप्त होने वाले आवेदन अस्वीकृत कर दिया जायेगा और इसके लिए आयोग कतई जिम्मेवार नहीं होगा।

6. In this context, from the documents appended with the writ applications, in support of sending of applications by the petitioners either through the registered post or speed post, all in the date of 15.07.2010 or 16.07.2010, it cannot be established that they

were received in the office of the Commission on or before 6:00 P.M. on 19.07.2010.

7. The solitary evidence of the petitioner no. 3, by way of a letter of the Postal Department obtained by him under Right to Information Act, in fact, also does not in any way improve the case either of the petitioner no. 3 or others. From perusal of Annexure-2, the letter of the Postal Department dated 09.05.2011, it cannot be conclusively said that the application of the petitioner no. 3 sent through registered post has been received in the office of the Commission on or before 19.07.2010 inasmuch as that letter refers to distribution of registered letter no. 4278 on 16.07.2011. This Court would presume that there is an error in writing of the date on 16.07.2011 in the document contained in Annexure-2, but then what would still go against the petitioners is that the supporting documents of distribution of slip also do not bear either seal or stamp of the employee/officer of the Commission. In fact, such distribution slip in the date of 30.07.2010 does not inspire any confidence and, therefore, this Court will have no difficulty in accepting the submission of the learned counsel for the respondent-Commission that such application of the petitioner was never received within the prescribed period of time i.e. on or before 19.07.2010.

Re. C.W.J.C. No. 19706 of 2013:

8. In this case, the sole petitioner, Sanjay Kumar Ravidas, while praying for a similar relief, has claimed that he had sent his application by speed post from Nawada G.P.O. Learned counsel for the petitioner, in this regard, has also referred to a communication of the Postal Department dated 07.03.2014 wherein the proof of such service of alleged speed post letter sent by the petitioner on 14.07.2010 has been rejected on the ground that the Postal Department does not maintain the records of delivery of registered post/speed post after a period of one year.

9. Mr. K.M.Joseph, learned counsel appearing on behalf of the petitioner has submitted that the petitioner has no proof of service of the registered cover containing the application of the petitioner sent to the office of the Bihar Staff Selection Commission (hereinafter referred to as 'the Commission'). He has explained that the petitioner had approached the postal authorities in this regard and the only information given to him was that no record, as with regard to service of registered cover, was preserved by them after expiry of a period of one year. According to Mr. Joseph, since the Commission itself had published the list of eligible candidates for the first time after a period of one year, the petitioner cannot produce any evidence by way of proof of service of registered cover. He, however, would

rely on provisions of Section 27 of the General Clauses Act with regard to presumption of delivery of the letters sent by registered post.

10. Mr. Satyam Shivam Sundaram, learned counsel appearing on behalf of the Commission, has submitted that the Commission had published the list of the candidates whose applications were received in the year 2011, but the petitioner did not object at that point of time either in the office of the Commission or before the Apex Court where the matter was being monitored in relation to appointment on 34540 posts of teacher. He has, accordingly, submitted that this writ application filed in the year 2013 is wholly belated and the petitioner, in any event, cannot draw any advantage of the order of the Apex Court dated 18.07.2013, as he had never moved the Apex Court. He has also submitted that there is no proof of delivery of the application sent by the petitioner by registered post. According to him, the case in hand is squarely covered by ratio laid down by the Division Bench in the case of *Manas Kumar Singh vs. Bihar Public Service Commission*; {2010 (2) PLJR 1008}.

11. There would be no difficulty in accepting submission of learned counsel for the Commission because as a matter of fact the petitioner has not produced any evidence to show that such



application sent by him was served in the office of the Commission on order before 6:00 PM on 19.07.2010. As a matter of fact, when the petitioner had filed this writ application on 25.09.2013 only on the strength of the order of the Apex Court dated 18.07.2013, he will be also bound by the order of the Apex Court which is confined only to the applicants whose names were included in the panel/merit list prepared by Hon'ble Mr. Justice S.K.Chattopadhyaya and also approved by the Apex Court.

Re. C.W.J.C. No. 21601 of 2013:

12. In this writ application, the petitioner, Sunita Rani Sinha, has claimed that she had sent her application on 13.07.2010 through registered post, which according to her, was received in the office of the Commission on 16.07.2010. In support of this fact, she has referred to information given by the Superintendent of Post Offices, Nalanda dated 15.12.2011 wherein it has been mentioned that the registered letter was delivered on 16.07.2010. Yet again, there is no proof of service of such registered letter by way of receipt of any employee or officer of the Commission and it is the endorsement made on 4.01.2012, on the basis of which the petitioner claims delivery of her registered letter no. 40. This Court, therefore, cannot place any reliance on such letter of the Postal Department because had the Postal Department produced the actual delivery of



the registered letter of the petitioner by way of its receipt by some employee or officers of the Commission, the question could have been put to the Commission. In absence of any such proof, this Court will have no difficulty in accepting the submission of the learned counsel for the Commission that there is no proof of receipt of the application of the petitioner in the office of the Commission. As a matter of fact, the Commission in its counter affidavit had taken a clear stand that the list of all the applications received within time was notified on the website and the petitioner's application was not included amongst the valid 1,23,149 applications.

13. As a matter of fact, learned counsel for the petitioner was also given an opportunity to file a clear proof of service of application by the petitioners of all theses cases, but no such proof was filed of any one of them. Learned counsel for the petitioner, however, has placed reliance on the judgment of the Apex Court in the case of *V. Raja Kumari v. P.Subbarama Naidu & Anr.* reported in *AIR 2008 SC 109*. This Court would find that the Apex Court, in the case of *V.Raja Kumari* (supra), was actually dealing with the presumption of service of notices under Sections 138 and 142 of the Negotiable Instrument Act and, therefore, whatever was said in relation to such presumption was to be in relation to complainant coming out with the case of dishonour of cheque and sendee rebutting

the same. Moreover, even in that case, it was made clear that such question of presumption of service of notice, being a question of fact, was to be decided in trial as would be evident from reading of para 19 of the judgment which reads as follows:

"19. Burden is on the complainant to show that the accused has managed to get an incorrect postal endorsement made. What is the effect of it has to be considered during trial, as the statutory scheme unmistakably shows that the burden is on the complainant to show the service of notice. Therefore, where material is brought to show that there was false endorsement about the non-availability of notice, the inference that is to be drawn has to be judged on the background facts of each case."

14. The next judgment, relied upon by the learned counsel for the petitioner, is again of the Apex Court in the case of ***U.P.State Sugar & Cane Development Corporation Limited v. Chini Mill Mazdoor Sangh & Ors.*** reported in ***AIR 2009 SC 387***. In the considered opinion of this Court, that judgment has absolutely no relevance to the issue in hand inasmuch as the Apex Court therein had gone to examine the issue of permanent workman.

15. Finally, the learned counsel for the petitioner had also relied on the judgment of the Apex Court in the case of ***Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*** reported in ***2010 AIR SCW 7049***. From the reading of the aforementioned judgment, which was rendered in the context of a criminal trial, it would be evident that the issue regarding



presumption of service of letters sent through registered post under Section 27 of the General Clauses Act is rebuttable and it is open to the parties concerned to place evidence before the Court to rebut the presumption. The spirit of Section 27 of the General Clauses Act or the presumption of service on registered letter in the present case could have made the situation favourable had it been the case of service of the registered letter.

16. In the present three cases, however, the issue is as to whether the registered letters sent by the petitioners were delivered in the office of the Commission on or before 19.07.2010 ? There is no documentary evidence, which would establish that the application filed by the petitioner had been received by any employee or officers of the Commission on or before 19.07.2010 and in absence thereof mere sending of applications by the petitioners by registered post/speed post cannot be also the proof of their receipt in the office of the Commission on or before the last date of filing of the application i.e. 19.07.2010.

17. As a matter of fact, the issue regarding rejection of candidature, on the ground of receipt of application after the last date, was directly gone into by the Division Bench of this Court in the case of *Manas Kumar Sinha vs. Bihar Public Service Commission* reported in *2010(2)PLJR 1008*, wherein on a detail consideration of

the same issue, it was held that Section 6 of the Post Office Act, 1898 itself had provided in case of delayed delivery the immunity granted under section 6 of the Post Office Act would save the Government.

Section 6 of the Post Office Act reads as follows:

"Section 6. Exemption from liability for loss, misdelivery, delay or damage.- The [Government] shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the 'Central Government] as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he ahs caused the same fraudulently or by his willful act or default."

11.

12.....

13. Thus, both on account of the terms of advertisement as also in view of Section 6 of the Post Office Act, 1898, the B.P.S.C. cannot be held liable for the delayed receipt of the application of the writ petitioner."

18. In fact, the learned counsel for the respondent-Commission has also correctly pointed out that on receipt of the applications of more than 1,23,149 candidates till the last day they were put on website and also placed before the Apex Court. Learned counsel for the Commission has submitted that the petitioners did not file objection to their such non-inclusion of the names in the list and their representations filed now, only in view of the order of the Apex Court dated 18.07.2013, are wholly a belated attempt because the



Apex Court in the aforesaid order has confined the filling up of 2413 posts only from the applicants whose names were also included in the seniority list prepared by Hon'ble Mr. Justice S.K.Chattopadhyaya. According to learned counsel for the respondents, the Commission and the State of Bihar, no new persons, whose names have not been included in the list, can be considered for appointment against remaining 2413 posts out of 34540 posts of teachers.

19. This Court also finds support to such submission from the proceedings before Apex Court inasmuch as the whole issue of preparation of seniority list/panel was considered by the Apex Court. To that extent, it would be relevant to quote my own order dated 15.01.2014 in C.W.J.C. No. 17899 of 2012 (***Kanti Kumari vs. the State of Bihar & Ors.***), wherein the entire history of preparation of panel has been gone into at length before holding that 2413 left over post of teachers, in the total number of 34540 posts sought to be filled up, were to be filled up only from amongst the candidates whose names were included in the list prepared under the supervision of and also approved by the Apex Court. The relevant portion of the order in the case of Kanti Kumari (supra) reads as follows:-

"8. The job of preparation of panel for filling up 34540 posts of teachers however was not easy and when complaints were made before the Apex Court that steps were not being taken by the Commission in preparation of the panel strictly as per the Rules, the preparation of such panel came under the scanner of the Apex Court and such panel ultimately was finalized under the orders of the Apex Court in the pending Contempt Petition (Civil) No. 297/2007 in Special Leave

Petition No. 22882/2004 as would be evident from the order dated 7.12.2010, relevant portion whereof reads as follows:-

"A category-wise details of vacancies along with recommendation status has been filed on behalf of the State of Bihar today. In fact, with regard to the list which had been filed earlier by the State, a response has been filed on behalf of the petitioners from which it appears that there are certain incongruities in the furnished list. However, the said list does not cover all the names included in the list. The State of Bihar is given further four weeks' time to bring out a fresh list in terms of the orders passed on 9th December, 2009 and 12th May, 2010 in order of seniority incorporating each and every candidate and category to which they belong. The exercise undertaken by the State does not reflect such state of affairs. The learned counsel for the petitioner in S.L.P.(Civil)No. 22882/2004 is requested to assist learned Standing Counsel for the State of Bihar in the exercise so that a complete chart can be made out and after proper scrutiny the candidates can be eliminated from the list. If possible, the objections raised with regard to some of the candidates having taken their B.Ed training from institution which had been de-recognised or un- recognised for the said purpose shall also be provided.

Let this matter be listed once again on 19th January, 2011 at 3.00 p.m. for further consideration. A copy of the list to be finalised and submitted to this Court should be provided to learned counsel for the respondents in the aforesaid Special Leave Petition atleast a week before the next date of hearing. Other intervenors/parties who have been impleaded or have been given leave to intervene, may obtain copies of the same from the learned Advocate-on-Record for the respondents in the Special Leave Petition."

9. The Apex Court by an order dated 19.1.2011 having found the issue of preparation of panel to be a jinxed one, had appointed Hon'ble Justice V.A. Mohta, the retired Chief Justice of Orissa High Court to be the Special Officer in whose presence the panel was to be finalized in the manner prescribed by the Apex Court in its order dated 19.1.2011, relevant portion whereof reads as follows:-

"On 7th December, 2010, certain incongruities in the list of eligible candidates furnished by the State of Bihar, were pointed out on behalf of the petitioners. As a result, the State of Bihar was directed to bring out a fresh list within four weeks in terms of the orders passed on 9th December, 2009, and 12th May, 2010, in order of seniority, incorporating the names of each and every candidate and the category to which they

belonged. Since the exercise undertaken by the State did not reflect the same, today when the matter is taken up, a fresh list has been filed, but the incongruities still remain. It is also unfortunate that the petitioners were not effectively participating in the exercise, as a result of which the anomalies have not been completely eliminated. Having heard learned counsel for the respective parties and since we are of the view that the matter should not be allowed to linger any further, we have no other alternative but to direct that the list now submitted be reconsidered once again, but in the presence of the counsel of the respective parties and a senior advocate of this Court. The said exercise may involve three or four different stages. The first stage would be for the petitioners and those who have been allowed to intervene, to point out anomalies which according to them, still exist in the list and the same is to be pointed out to the learned counsel for the State of Bihar within two weeks from date. In addition, since a submission has been made by Mr. Upadhyay that certain names have not been included in the list, although they are eligible, he will be entitled to point out the same to the advocate for the State of Bihar within the said period. On receipt of the same, the State shall look into the objections, and, thereafter, arrange to obtain the records relating to each of such candidates in respect of whom such objections are raised. Within two weeks after such objections are filed, the second meeting shall be held in which the learned counsel for the State of Bihar and the other parties shall sit together to work out the anomalies or the incongruities. If necessary, further sittings may be held after four weeks to iron out all the creases, sort out all the anomalies and to work out a final list acceptable to all the parties, and, thereafter, to submit the same to this Court. For the aforesaid purpose, we appoint retired Judge of the Bombay High Court Justice V.A. Mohta, who retired as the Chief Justice of the Orissa High Court, to be the Special Officer in whose presence the second and third stages will take place. The learned Special Officer will be associated with the settling of the objections that may be raised and the final list to be submitted under his signature. For the aforesaid purpose, objections, if any, shall be filed before the learned Advocate-on-Record for the State of Bihar by 31st January, 2011. The second meeting is to be convened on 19th February, 2011 at 10.00 a.m. in the Supreme Court Arbitration Centre, M.C.

Setalvad Chambers or in the alternative, such meeting may also be held at the Arbitration Hall of the Neeti Bagh Club. At the said meeting the individual applications in respect of which objections are filed will have to be produced. In the event the matter cannot be settled on 19th February, 2011, it may be carried forward to the next day i.e. 20th February, 2011. A third meeting, if necessary, may also be convened on 5th March, 2011 on which date the list must be made ready and the list of eligible candidates must be finalised for submission to the Court. Let this matter be adjourned till 29th March, 2011 at 3.00 p.m. In order that the matter is finally settled, learned counsel of the respective parties are requested to cooperate so that no further adjournment is required to be granted on 29th March, 2011. Learned senior counsel appearing for the parties are requested to render their assistance to finalise the matter. The learned Special Officer will also consider the objections that are raised and will submit a comprehensive report in respect thereafter, with regard to the eligibility of the candidates. The learned Special Officer will be entitled to fix his own remuneration and the same will be borne equally by the parties. Let a copy of this order be made available to the learned counsel of the respective parties and to the learned Special Officer Justice V.A. Mohta."

10. It would thus become clear that now the Apex Court was directly monitoring even the preparation of the panel for appointment on the post of 34540 posts of teacher. The Apex Court again by an order dated 24.2.2011 having found inability on the part of Hon'ble Justice V.A. Mohta to work as a Special Officer had substituted him by appointing Hon'ble Justice S.K. Chattopadhyaya, a retired Judge of Jharkhand High Court and had issued certain directions which again for the sake of clarity and convenience is quoted hereinbelow:-

"By our order dated 19th January, 2011, we had at the invitation of the parties and in order to put an end to the disputes, appointed Mr. Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, to be the Special Officer, in whose presence the order of 19th January, 2011, could be worked out. However, the matter was mentioned by the learned Special Officer on 18th February, 2011, not before this Bench, but before the other regular Bench, and the matter was directed to be listed today, for considering the submissions made by the learned Special Officer. In fact, the matter had been mentioned on account of the personal difficulties of the Special Officer so appointed, with a request to relieve him of the assignment.

Having considered the submissions made on behalf of the parties and in view of the fact that it may be more convenient for a retired Judge of a nearby High Court, who is also acquainted with the affairs in Bihar, to discharge the functions as entrusted to the Special Officer under our order of 19th January, 2011, we consider it appropriate to appoint Mr. Justice S.K. Chattopadhyaya, a retired Judge of the Jharkhand High Court, residing at "Peace Cottage", 58, North Office Para, Doranda, Ranchi (Jharkhand), as Special Officer in place of Mr. Justice V.A. Mohta. All other portions of the order dated 19th January, 2011, will remain in place. The learned Special Officer will be entitled to arrange his own schedule in consultation with Mr. Gopal Singh and Mr. Rakesh Uttamchandra Upadhyay, representing the State of Bihar and group of teachers. Both the learned Advocates will be at liberty to approach Mr. Justice S.K. Chattopadhyaya for the said purpose.

In addition to the above, a suggestion has been made by Mr. R.P. Bhat, learned senior counsel appearing for some of the petitioners, that the burden of the Special Officer could be lightened, if certain steps are taken by the State authorities, prior to consideration of the matter by the Special Officer. He has indicated that those candidates, who had obtained certificates from fake Institutes, could be identified in relation to the Institutes themselves, and a list of such candidates could be prepared separately. It has also been suggested that those candidates, if appointed, who would have less than one year in service, could also be segregated to consider the relief that could be provided to them. A further submission was that one applicant may have made several applications. The same could also be dealt with so that only one of the applications which were complete in all respects, could be taken up for consideration in respect of that applicant. The rest of applications could be rejected.

Since the said suggestions appear to be quite appropriate, the State authorities are directed to take steps in terms of the aforesaid suggestions and to provide the Special Officer and the parties with the said information in the form of charts before the matter is taken up by the Special Officer.

Liberty to mention."

11. Thereafter, the Apex Court again on being informed with regard to certain grievances of the candidates as with regard to their non-inclusion in the panel had passed yet another order on 29.3.2011 giving the opportunity to make their submission before the Hon'ble Justice S.K. Chattopadhyaya, the Special Officer appointed by the Apex Court. To that extent, it would be useful to quote the order

dated 29.3.2011, which reads as follows:-

"On 24th January, 2011, while appointing Mr. Justice S.K. Chattopadhyaya, a retired Judge of the Jharkhand High Court, as Special Officer in place of Mr. Justice V.A. Mohta, to ensure that the directions contained in the order of 19th January, 2011, were implemented, we had also indicated that certain steps be taken by the State, which would help in removing anomalies and incongruities in the preparation of the final list, which was to be taken into consideration for the purposes of filling up the vacant posts.

Today, we are informed that Mr. Rakesh Uttamchandra Upadhyay, learned counsel appearing for some of the petitioners, had spoken to Mr. Justice S.K. Chattopadhyaya, and that a copy of the aforesaid order has also been forwarded to His Lordship. We are also informed that both Mr. Gopal Singh, learned counsel appearing for the respondent-State of Bihar and Mr. Upadhyay, have been requested by the learned Judge to meet him on 3rd April, 2011, and that the matter has been fixed for consideration on the said date.

However, it appears that the directions, which were indicated in our order of 24th February, 2011, have not yet been fully complied with, although, we are informed by Mr. Kailash Vasdev, learned senior counsel and Mr. Gopal Singh, that a comprehensive list is ready, which contains various details regarding the status of each of the candidates. We are not satisfied with such a list only. We direct the State, in addition to the said list, to prepare the three separate lists, which we had indicated in our order of 24th February, 2011, within 1st April, 2011, and make over copies of the same to the learned Special Officer and Mr. Upadhyay, so that the same can also be scrutinized on behalf of the petitioners, when the matter is taken up by the learned Special Officer. Let this matter be listed for further consideration on 3rd May, 2011. Let this Bench be re-constituted on the said date for the aforesaid purpose.

Since there are a number of petitioners, who are represented by different counsel, apart from Mr. Upadhyay, one other counsel representing the other petitioners and nominated by them, will be entitled to make submissions before the learned Special Officer on behalf of the petitioners.

Let a compilation of the several orders passed by this Court in this matter be prepared, both by the State as well as by Mr. Upadhyaya,

and let copies of the same be made available to the learned Special Officer on 3rd April, 2011."

12. The next order of the Apex Court dated 3.5.2011 would also be an evidence to the fact that the Hon'ble Justice S.K. Chattopadhyaya, the Special Officer appointed by the Apex Court, while finalizing the list and removing the names of the candidates who were said to have passed their teachers training examination from the institution not recognized by the State of Bihar, had slashed it to 92170 as being eligible against the total number of 98408 candidates. This would be borne out from the relevant portion of the order dated 3.5.2011, which reads as follows:-

"Mr. Kailash Vasdev, learned senior Advocate appearing for the State of Bihar, has submitted a compilation of the Minutes of the Proceedings before Mr. Justice S.K. Chattopadhyaya, a retired Judge of the Jharkhand High Court, who was appointed as Special Officer vide this Court's order dated 19th January, 2011, to oversee the finalization of the list of eligible candidates for filling up 34,540 vacancies in the post of trained teachers, as identified. From the Minutes of the Proceedings, it appears that a list of eligible candidates totaling 98,408 has been identified and within the said number of eligible candidates, two other groups have been included. One group is from 8 institutions not recognized by the State of Bihar and the other comprise candidates from 29 out of the list of 213 un-recognized institutions furnished by the petitioner, which constitute a total of 6,238 candidates. It has been suggested by the learned Special Officer that these two categories of candidates may also be excluded from the list of eligible candidates identified, so that ultimately we are left with 92,170 eligible candidates for filling up the vacant 34,540 posts. In the Minutes of the Proceedings of the Special Officer, three certificates have been referred to, which indicate that the concerned representatives of all the candidates were satisfied with the list as such, and they have no grievance in respect thereof. Although, we were inclined to pass orders on the materials, as placed by the State of Bihar today, there are some candidates represented by some other learned advocates, who had not been served with the copy of the order sheets of proceedings of the Special Officer. The learned Advocates, who are representing those persons, who are either impleaded as parties or were allowed to intervene in the matter, may approach the Registry and obtain copies of the order sheets of proceedings and soft copies of the list finalized by the learned Special Officer. Mr. Gopal Singh is requested to make

available sufficient number of copies of the order sheets of proceedings and soft copies of the list to the Registry.

Let this matter be listed 'for orders' on 12th May, 2011, at 3.30 p.m. and let this Bench be re-constituted on the said date for the aforesaid purpose.

Leave is given to the learned counsel for the State of Bihar to file one set of the Minutes of Proceedings before the learned Special Officer in Court and let the same be kept on the record."

13 The Apex Court in its next order dated 12.5.2011 in fact had given further indulgence to category of candidates who had complained that they could not avail the opportunity of hearing before Hon'ble Justice S.K. Chattopadhyaya, the Special Officer and requesting the Special Officer to submit the list by 13th of July, 2011 as would be apparent from the following extract thereof:-

"Further to our order passed on 3rd May, 2011, copies of the report of the Special Officer, Mr. Justice S.K. Chattopadhyaya, was made available, along with the list prepared by the learned Special Officer, to those who had applied for the same. Today, when the matter is taken up, some objections have once again been received from some of the said candidates. Let the objections, which have been filed today be considered by the learned Special Officer and he is requested to complete the finalization of the list after considering the same and to submit the same to this Court on 13th July, 2011.

Let this Bench be reconstituted on 13th July, 2011, at 3.30 p.m. We make it clear that no further objections will be entertained in the matter and the final list is to be submitted, as directed, on the said date.

Let a copy of this order be communicated to the learned Special Officer, both through the Registry and also by Mr. Kailash Vasdev, learned senior Advocate appearing for the State of Bihar."

14. From the records, it would appear that pursuant to the aforementioned order of the Apex Court, Hon'ble Justice S.K. Chattopadhyaya, the Special Officer appointed by the Apex Court, had submitted his report on 8.7.2011, relevant portion whereof reads as follows:-

"Mr. Santosh Kumar, learned Advocate and Mr. Gopal Singh, learned State Counsel are present along with State Officials. Even today no one has appeared on behalf of the petitioner.

However, Mr. Santosh Kumar has gone through the final Seniority List filed before me today, by the State of Bihar through its Standing Counsel Mr. Gopal Singh.

Seniority List settled by me on 01.05.2011



was filed before the Hon'ble Supreme Court for its kind consideration on 03.05.2011. After considering the same, the matter was adjourned to 12.05.2011. On the said date, the Hon'ble Court had directed that further objections which were filed on the said date were to be sent to me for consideration. In terms thereof, proceedings were held before me on 24.05.2011, 14.06.2011 and 02.07.2011 at Ranchi. After going through all the objections in detail and hearing parties at length on all dates, hearing was concluded on 02.07.2011 and the State of Bihar was directed to incorporate the changes settled by me and submit the final seniority list on 08.07.2011 at 7:00 for my authentication.

Accordingly, the State of Bihar has today submitted the Final Seniority List. I have been informed that all the pages have been initiated by officials of the Bihar Staff Selection Commission, which has been verified by me. Authentication of the list by affixing my rubber stamp on each page and signing the first page and the last page of each volume itself has taken considerable time. Four CDs containing the data have also been signed by me and have been given with the Final Seniority List to Mr. Gopal Singh, learned Counsel for the State of Bihar, for being filed before the Hon'ble Supreme Court before the next date of hearing. Perusal of the List shows the following:-

01.	Total No. of Application Received	1,23,149
02.	Total No. of Candidate in the merit list	94,205 (1 to 94,205)
03.	Total No. of Candidate in Unrecognized Institute	4,790 (94,206 to 98,995)
04.	Total No. of Candidates in Duplicate List	7,147 (98,996 to 1,06,142)
05.	Total No. of Candidates in Duplicate List but from Unrecognized Institute	361
06.	Total No. of Candidates in Rejection List	17,007 (1,06,143 to 1,23,149)
07.	Total No. of Candidates in Rejection list but from Unrecognized Institute	1,084
08.	Total No. of Candidates from Unrecognized Institute	6,235
09.	As per order of Supreme Court dated 03.05.2011 Total No. of Candidate from unrecognized Institute 6,238 were to be taken out from the merit list and to be kept at the bottom of merit list.	

I accordingly settle the Final Seniority List today and submit for kind approval of the Hon'ble Supreme Court the Final Seniority List of 1,23,149 candidates running into 4032 pages for

appointment to the post of 34,540 Assistant Teachers to be appointed in the State of Bihar in terms of the orders dated 09.12.2009 & 12.05.2010 of the Hon'ble Supreme Court under the Bihar Special Elementary Teachers Recruitment Rules, 2010 and the advertisement issued thereunder.

Today I have also been informed by the State that objections at Sr. 172 (wrongly typed as 174) was with respect to the candidate who had applied under the General category and not under the Urdu category. Since the candidature of this person has been considered and not rejected by the State, accordingly, my order dated 02.07.2011 stands modified to this extent.

I deem it appropriate to observe that numerous objection petitions have continuously been received till date by me, by the Standing Counsel for the State, by the HRD Department and the Staff Selection Commission. All of these objection petitions received by me till date have been handed over to the State. With respect to a majority of them, at my instance, the State has also prepared a Status Report. Since the order of the Hon'ble Supreme Court dated 12.05.2011 is clear that only objections which were filed on 12.05.2011 were to be considered and that no further objections would be entertained, the same can not be considered by me.

Before parting, I wish to record my appreciation for the assistance rendered to me by all concerned.

Sd./-

08.07.11

*S.K. Chattopadhyaya
(Special Officer)"*

15. The next order of the Apex Court dated 13.7.2011 would again be the evidence of the fact that even a single grievance of a candidate of not being considered or heard by the Special Officer was taken note of and redressed by the Apex Court in course of its monitoring the preparation of final seniority list as would be evident from the extract of the order dated 13.7.2011, which reads as follows:-

"A submission has been made on behalf of one, Mr. Avinash Kumar, s/o Shri Babua Nand Pandey, whose claim was not considered by the learned Special Officer on account of the fact that he was unable to show that he was a party to the proceedings. However, as has been pointed out by Mr. Rama Murti, learned senior Advocate, and as verified from the record, it appears that Shri Avinash Kumar was, in fact, impleaded as a party in the proceedings by order dated 23rd April, 2009. Accordingly, the claim of Shri Avinash Kumar is also to be considered for appointment.

Let it be recorded that the learned Special Officer has furnished the final seniority list. Let this matter be listed for further consideration on

13th October, 2011, and let this Bench be reconstituted on the said date at 3.30 p.m.

In the meantime, the State of Bihar shall take steps to finalize the Roster, in terms of the final seniority list. A copy of the final Roster prepared, may also be produced in the Court on that day.

The final seniority list prepared by the learned Special Officer, as filed in the Court today, be kept in the custody of the State. Let a copy of the Order Sheet of the proceedings before the learned Special Officer from Order No.6, dated 24th May, 2011, onwards filed in Court today, be kept on the records.

In the meantime, if there are any outstanding dues payable to the learned Special Officer, such payment should also be cleared."

16. The Apex Court, thereafter, on 13.10.2011 had passed a significant and detailed order approving the final merit list by Hon'ble Justice S.K. Chattopadhyay, the Special Officer and that order being very relevant is quoted herein below in-extenso:-

"Contempt Petition (C) No.297 of 2007, filed in S.L.P. (C) No.22882 of 2004, arose out of an alleged breach of undertaking said to have been given on 18th January, 2006, by the State of Bihar and the order passed on the basis thereof on 23rd January, 2006, by this Court in S.L.P. (C) No.22882-22888 of 2004. As we have indicated in our order dated 9th January, 2009, a number of writ petitions had been filed against the State of Bihar, raising issues relating to recruitment of teachers in primary schools. At one stage, it was brought to our notice that on account of changes in the policy, trained teachers who were in place at the time when the undertakings were given, could not be accommodated. Accordingly, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts, should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement which had been published for recruitment of primary school teachers and took the number of available vacancies to be 34,540.

We had directed that the said vacancies be filled up with the said number of trained teachers as a one-time measure to give effect to the undertakings which had been given on 18th January, 2006 and 23rd January, 2006. Accordingly, without issuing a Rule of Contempt, we had directed that the said vacancies be filled up from amongst the trained teachers, who are available in order of seniority.

Subsequently, however, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

As a result, the State of Bihar, was directed to bring out a fresh list in terms of the orders which we had passed on 9th December, 2009 and 12th May, 2010, in order of seniority, incorporating the names of each and every candidate and the category to which they belonged. As the lists prepared were disputed, we thought it fit that in order to resolve the anomalies, a neutral person should be entrusted with the work of settling the list over which the dispute had arisen and, accordingly, by the said order we appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta of the responsibility of acting as the Special Officer, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list.

Subsequently, several sessions were held by the learned Special Officer, at which the parties and the institutions were duly represented by counsel and His Lordship, thereafter, submitted a finalized list of the eligible candidates in order of seniority, taking into consideration the various institutions and the certificates produced by the candidates concerned. On the basis of the said list, we had requested the State of Bihar to prepare a Roster for the purpose of reservation of seats according to the different reserved categories. Such exercise has also been undertaken and completed and the list prepared in terms of the Roster has also been produced in the Court in a sealed cover.

Today, when the matter is taken up, Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, has raised some issues, which need to be clarified.

The first issue relates to the

claim of one Shri Abhinesh Kumar, s/o Shri Babua Nand Pandey, that his case has not been considered by the learned Special Officer on account of the fact that he was not a party to the proceedings. On 13th July, 2011, Mr. Rama Murti, learned senior Advocate, submitted that Shri Abhinesh Kumar had, in fact, been impleaded as a party and, accordingly, we had directed the State of Bihar to consider his place in the seniority list as well. Today, we are informed by Mr. Kailash Vasdev that his position stands at serial number 62,551, which is far beyond the number of vacancies to be filled up. Accordingly, nothing further is required to be said at the present, as far as his claim is concerned.

The second issue which has been raised by Mr. Kailash Vasdev is with regard to the examination of the certificates and other documents that may be produced by the candidate concerned at the time of counselling and appointment. In the event, during scrutiny it is found that any of the documents do not conform to the requirements, the concerned authorities will be at liberty to take appropriate steps regarding the said candidate.

The third issue raised was with regard to the candidates, who are to retire at the age of 60 by 31st January, 2012, within which period they would have attained the age of 60 years. It is no doubt true that this matter has been pending for a long time and there is possibility of some candidates being adversely affected on account of such delay, but at the same time we cannot also overlook the fact that a person cannot be allowed the benefits of appointment without serving the institution for at least some length of time. Accordingly, the cases of the candidates who will be retiring on or before 31st January, 2012, need not be considered for appointment.

Fourthly, the Special Recruitments Rules, which have been framed by the State for the purpose of appointment of primary teachers in these vacancies, shall be deemed to have been modified to the extent of the directions which have been issued by this Court from time to time and also by this order.

There is yet another group of candidates, who claim to be adversely affected by the deliberations and the findings of the learned Special Officer while preparing the list of eligible candidates. It has been claimed by some of the candidates that their institutions have been shown to be unrecognized/fake, whereas from the very same institution other candidates have been found

eligible, although, this has not been admitted by Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, we feel if that is the case, such candidates should not be deprived of an opportunity in future. Accordingly, we direct that such candidates will be at liberty to apply to the Bihar Staff Selection Commission for reconsideration of their status and the status of their institutions in respect of which objections have not been considered by the Special Officer. If such representations are made, the same should be considered and disposed of by the Commission, after giving the candidates an opportunity of hearing and placing their cases before the Commission and if it is found that their cases are genuine, the said candidates should be considered in future vacancies, when other vacancies are available, in order of seniority.

There is one more issue, which has been raised by Mr. Kailash Vasdev, and that will be evident from the chart which has been submitted by him showing the distribution of posts. According to the requirement of the posts for Physical Education Teachers, the number shown is 1084, whereas in terms of the distribution of the number of vacancies amongst 34,540 candidates, the figure shown is 4,972, which means that there is an excess number of posts vis-a-vis the number of candidates actually required. On the other hand, as far as Urdu as a subject is concerned, while the requirement is 12,862 in terms of the distribution of posts, the figure has been shown as 1,509, which falls far short of the required number of candidates. Accordingly, Mr. Vasdev has submitted that the excess number of posts in the Physical Education Subject category may be allowed to be shifted to the Urdu Subject category, which would compensate the Urdu Subject category to some extent. We feel that there is substance in such a submission and, accordingly, we allow such prayer as well. The State Government will be at liberty to transfer the excess vacancies in the Physical Education Group to the Urdu Subject category.

This brings us to the end of a long and arduous journey regarding the appointment of trained teachers in terms of the undertaking given in this Court by the State Government. We would like to express our deep sense of appreciation to Justice S.K. Chattopadhyay for having undertaken the tedious and painstaking exercise of finalising the list of eligible candidates to be considered for filling up the 34,540 vacancies identified during these

proceedings.

We are informed that nothing remains to be paid to the learned Special Officer on account of his remuneration.

We also express our appreciation to all the counsel who appeared and helped us to resolve this matter for the benefit of the large number of trained teachers in Bihar who were waiting for appointment all these years.

Let the original Roster, as well as the seniority list, which have been produced before us in a sealed cover and is at present lying in the custody of Mr. Gopal Singh, learned Standing Counsel for the State of Bihar, be sent to the Human Resource Department, Government of Bihar, for implementing this order. We make it clear that since the Roster, as well as the seniority list, have been prepared in terms of the order of this Court, no Court shall entertain any other objections or applications with regard to the same.

The contempt petition, as well as the pending interlocutory applications are also disposed of by this order."

17. From reading of the aforesaid order not only containing the history of the entire facts leading to steps being taken for appointment on 34540 posts but also preparation of the final merit list, it would be clear that each and every grievance raised either by even the individuals alike Shri Abhinesh Kumar or the specific group of the persons whose institution were shown to be un-recognized and fake were specifically addressed to by the Special Officer and the Apex Court. In fact, the Apex Court had also made it clear that for such of the institutions of the candidates which were declared to be fake/unrecognized and from whom other candidates even of the same academic had been found eligible, the remedy for them was to move the Commission for reconsideration of the status and if the Commission would find their cases to be genuine, they would be considered for "future vacancy".

18. It is again in this order that the Apex Court had settled the issue of distribution of number of vacancies by pointing out that though in the requisition the number of posts of Physical Education Teacher was 1084 but the vacancy in fact was 4972. On the other hand, for the post of Urdu subject, though the requirement was of 12862 teachers the figure of eligible candidates in the list was shown to be 1509. The Apex Court, therefore, had accepted the proposal of the State of Bihar that the excess number of posts of Physical Education subject category should be shifted to Urdu Teachers and liberty was given to the State Government to transfer the excess vacancy of teachers of Physical Education to the teachers of Urdu subject category.

19. The matter in fact for all purposes came to an end with the aforementioned order of the Apex Court dated 13.10.2011 whereafter the process of appointment had started against

34540 posts of teachers strictly as per the list finalized by the Apex Court and while 32127 posts had been filled up, 2413 posts had remained vacant.

20. It is a matter of record that in terms of the aforesaid direction of the Apex Court in the order dated 13.10.2011, the Commission, in keeping with the panel position of 94205 eligible candidates, had finalized the names of 34540 candidates strictly in accordance with the provisions made in the rules read with terms of the advertisement and had sought to fill up 28600 posts of general subject teachers, 4827 posts for Urdu subject teachers and 1113 posts from physical subject teacher. Thus, when the panel drawn by the Commission was sent to the Government, it was given a wide circulation as also uploaded on the website of the Education Department on 21.12.2011 for general information to all the candidates. A press communiqué was also issued in the newspaper setting out the time schedule for appointment on 10.1.2012 and the process of appointment was sought to be completed in between 21.1.2012 to 7.2.2012.

21. It is very significant to note here that in course of making appointment from the approved panel/merit list of 94205 candidates when appointments were made against 34540 posts, the State Government not only in keeping with the directions of the Apex Court but also keeping with the provisions made in 2010 Rules as well as clause-3 of the Advertisement on account of non availability of adequate number of candidates in reserved category/Urdu subject had decided to fill up the remaining such vacancies from amongst the candidates of unreserved category of the general subjects. This would become more clear from the following table:-

Category or subject of teacher	Number of Posts Advertised	Number of posts decided to be filled up in terms of Rules	Number of Actual Appointment made	Vacant number of posts.
General Subject	20594	28600	26593	2007
Urdu Subject	12862	4827	4455	372
Physical Training Subject	1084	1113	1079	34
Total	34500	34,500	32,127	2413

22. It also has to be kept in mind that the process for aforesaid appointment was sought to be completed in respect of entire 34540 posts of teacher and 2413 posts could not be finally filled up on account of constraints during consideration, inasmuch as, 1929 candidates did not turn up for counseling, whereas case of 366 candidates were kept pending for final decision and rest of the 118 candidates were found to be ineligible on account of non fulfillment of the eligibility criteria.

23. The State Government thus having completed the exercise for filling up the 34540 posts of teachers, in which 2413 posts

had remained vacant on account of the reasons indicated above in the preceding paragraphs, had also submitted before the Apex Court a status report dated 30.8.2012 which being very relevant for the purpose of understanding the ultimate order passed by the Apex Court on 18.7.2013 which is the subject in issue in all these writ applications, is reproduced hereinbelow:-

"Status Report with respect to appointment of 34,540 posts of Assistant Teachers in Elementary Schools in Bihar, in terms of the directions dated 13.10.2011 of this Hon'ble Court, by way of affidavit.

I, Ashutosh, aged about 48 years, son of Late Gurucharan Lal, resident of F-202 Amarkunj Apartment, Vivekanand Marg, Boring Road, Patna, do hereby solemnly affirm and state as under:

1.That I am the Director (Primary), Education Department (erstwhile Human Resource Development Department). I am conversant with the facts and circumstances of his case from a perusal of the records of this case in my official capacity. I am authorized to swear this affidavit. Hence I am competent to swear this affidavit.

2.That the Final revised List of 34,540 candidates, in terms of the direction of this Hon'ble Court dated 13.10.2011, was received by the Education Department from the Bihar Staff Selection Commission on 19.12.2011. The Subject-wise and Category-wise number of candidates required to be appointed was as follows:-

i. General subjects	28,600
ii. Urdu subjects	4,827
iii. Physical	<u>1,113</u>
	34,540

3.That the seniority list was uploaded on the website of the Education Department (www.educationbihar.in) on 21.12.2011 for general information to the candidates. A press communiqué was also issued in the newspaper. A press communiqué regarding the Time Schedule for appointment was again published in the important newspaper of the State on 10.01.2012, which was as follows:-

i	District-wise list of candidates uploaded on website www.educationbihar.in	21.01.2012
ii	verification of certificates/ documents	Urdu and Physical Subject: 23.01.2012 to 25.01.2012 General Subject: 30.01.2012 to 03.02.2012
iii	Handing over of appointment letters	Urdu and Physical Subject: 30.01.2012 to 31.01.2012 General Subject: 06.02.2012 to 07.02.2012

4. That in fact, the district-wise list of candidates was uploaded a little earlier on the website on 17.01.2012 itself, instead of the stipulated date of 21.01.2012, for information to the candidates. Detailed instructions were issued to the district authorities for the appointment process and verification of certificates of the candidates on 18.01.2012. The district authorities verified the certificates of the candidates on the announced dates.

5. That the status of the candidates appointed after verification of their certificates is as follows:-

Subjects	Posts available	Posts filled	Posts vacant
General Subject	28600	26593	2007
Urdu Subject	4827	4455	372
Physical Subject	34540	32127	2413

6. That the status of the posts which have remained vacant is follows:-

Subject	absent during counseling	Candid not found fit for appointment	Candidates whose appointment is pending	Total
General Subject	1636	104	267	2007
Urdu Subject	267	14	91	372
Physical Subject	26	0	8	34
Total	1929	118	36	2413

7. That the caste-wise detail of the 1636 candidates of the General Subjects, who have remained absent is given below:-

Unreserved	807
Scheduled Castes	331
Scheduled Tribes	26
Extremely Backward Castes	319
Backward Castes	112
Backward Castes (Women)	41
Total	1636

8. That the certificates of the candidates have not been verified from their concerned Boards or Universities before their appointment. The appointment of some candidates, especially the candidates having degrees from other States & Union Territories and from Private Training Institutions has been done on the condition that payment of their salary will take place after the verification of certificates. Verification of certificates by the district authorities is underway.

9. That regarding the First Category, comprising of 1929 candidates who were absent on their date of counseling, it is submitted that the State may be permitted to examine each case afresh and if some candidates are found eligible for appointment in their own caste-wise category and as per the training session up to which the candidates having lower position in the seniority list have been appointed, they may also be appointed.

10. That the Second Category, comprising of 118 candidates who were not found fit for appointment for one reason or another, it is submitted that the State may be permitted to examine their candidature afresh and make appointments, if found in order.

11. That the third category, comprising of 336 candidates whose cases have been kept pending, are mainly of the following two types:-

i. Difference in case category and in training session, as mentioned in the seniority list.

ii. Some doubts about the degree of training and bonafide of the candidates due to difference in photograph.

The State may be permitted to examine their candidature and afresh and make appointments, if found in order.

12. That it is respectfully submitted that if this Hon'ble Court permits the State of Bihar to make appointments to the 2413 posts which are remaining vacant, the Seniority List prepared by the Learned Special Officer which had been approved by this Hon'ble Court, subject to some directions, by its order dated 13.10.2011, should also be permitted to be deemed modified to that extent.

13. That the facts stated in the above affidavit are true to my knowledge derived from the official records which I believe to be true. No part of the same is false and nothing material has been concealed therefrom.

Sd./-

30.8.12

DEPONENT

VERIFICATION

Verified that the facts stated in the above affidavit are true to my knowledge derived from the official records which I believe to be true. No part of the same is false and nothing material has been concealed therefrom.

Sd./-

30.8.12

DEPONENT"

24. The order dated 18.7.2013 was thus passed by the Apex Court in the light of the aforementioned stand taken by the State in its status report. The order of the Apex court dated 18.07.2013 had itself covered the brief background in which the entire exercise for filling up the post of 34540 vacancies on the post of Teachers in primary school had been undertaken and completed. The said order of the Apex Court dated 18.7.2013, therefore, which has a direct nexus for deciding the issue involved in the batch of these writ applications, is also quoted hereinbelow:-

"1. Special Leave Petition (Civil) Nos. 22882-22888 of 2004 were filed by several trained teachers for a direction upon the State of Bihar to appoint them in the vacancies in the post of primary teachers in the State of Bihar. The same was withdrawn on an undertaking given on behalf of the State of Bihar on 18th January, 2006, whereby the State of Bihar committed itself to recruiting and filling up the vacant posts of teachers in primary schools with trained teachers. The undertaking given by the State of Bihar reads as

follows:-

“That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.

That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna High Court, while making recruitment of teachers.

That it is respectfully submitted that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may not be necessary, and the order of this Hon’ble Court and of the Patna High Court in this regard may be modified”

2. The application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the petitioner, Nand Kishore Ojha, filed Contempt Petition (Civil) No. 207 of 2006, and the same was disposed of with a direction upon the State of Bihar to implement the undertaking given earlier, upon a categorical statement being made that priority would be given to the trained teachers in matters of appointment in the said posts.

3. Thereafter, on account of further default on the part of the State of Bihar to honour its commitments, another Contempt Petition, being Contempt Petition (Civil) No. 297 of 2007, was filed and several applications were made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties to the proceedings. Ultimately, the learned Attorney General appeared before us on 25th August, 2009, and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf. Since there had been a change in the administrative set up in the State of Bihar, the situation had become more complex and it had become difficult to work out a solution to the problem posed in filling up the vacancies in the post of primary school teachers throughout the State of Bihar. When Contempt Petition (Civil) No. 297 was taken up for consideration, we heard the same along with several interlocutory applications filed by several teachers having individual grievances and reserved judgment.

4. By our order dated 13th October, 2011, on the Contempt Petition filed in SLP(C) No. 22882 of 2004, arising out of the breach of undertaking given on 18th January, 2006, by the State of Bihar (illegible) passed on the basis thereof on 23 January, 2006 in the aforesaid SLP, we had passed orders directing that the trained teachers who at one time were less than the number of

vacant posts should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement, which had been published for recruitment of primacy school teachers and took the number of available vacancies to be 34,540. We had further directed that the said vacancies be filled up with the said number of trained teachers as a one time measure to give effect to the undertakings given on 18th January, 2006 and 23rd January, 2006.

5. Subsequently, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and the genuineness of some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

6. When the said dispute could not be resolved in terms of the list produced by the State of Bihar, we thought it fit to entrust a neutral person with the work and, accordingly, we had appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, we retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list. After much debate, the list submitted by Justice Chattopadhyay was accepted and in terms of the recommendations made, 34,540 candidates were appointed in different primary schools in the State of Bihar.

7. The matter did not end there. On account of the fact that some of the candidates, who had not appeared before Justice Chattopadhyay, came up with fresh applications in support of their cases and urged that there were various omissions from the final select list, we decided to entertain the said applications, particularly, on account of the directions, which we had given, in our judgment and order dated 13th October, 2011, that no court would entertain any objection or applications with regard to the list of candidates, who had already been appointed, in terms of our earlier order.

8. During the hearing of these applications, special leave petitions and writ petitions, what emerged is that most of the applicants were aggrieved by some defect or the other in the preparation of the select list, which occurred on account of the failure of the candidates to give their relevant particulars to Justice Chattopadhyay.

9. Be that as it may, in the event, some discrepancies had

crept in the final select list, the individual grievances contained various anomalies, which it is difficult for us to unravel. Accordingly, we modify our order dated 13th October, 2011, and allow the applicants to approach the High Court for redressal of their grievances. We also direct that the applications, special leave petitions and writ petitions filed before us be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working. We have been informed during the hearing that about 2413 posts out of the 34,540 posts were still left to be filled up. All the applications, Special Leave Petitions and Writ Petitions are, therefore, disposed of in the light of the aforesaid observations. We make it clear that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question."

25. From reading of the aforementioned order of the Apex Court dated 18.7.2013, nothing is left for speculation that it had not only approved the list (panel) prepared by Hon'ble Justice S.K. Chattopadhyay in capacity of Special Officer but had also approved the selection of 34540 candidates for their appointment as is specifically mentioned in the underlined portion in paragraph no.6 of the aforesaid order. As a matter of fact, the little ray of hope was created in paragraph no.9 of the order which however has to be understood in the context that no appointment already made in terms of the approved panel were to be disturbed. That would mean that even for those 2413 cases where the offer of appointment was already under process as per their seniority in the approved panel, they were also not to be disturbed unless their cases was altogether rejected. This also becomes clear from the status report filed by the State of Bihar before the Apex Court on 30.8.2012 as quoted above."

20 As a matter of fact, based on the aforementioned analysis of the order of the Apex Court, this Court has disposed of a large number of writ applications by giving following directions in the case of **Kanti Kumari** (supra):

82. Thus, having dealt with the aforesaid major issues in the batch of this writ petition and all other tagged together writ applications all of them are hereby disposed of with the following observation and directions:-

(i) For filling up 2413 posts, a Committee

consisting of Director, Primary Education and Secretary to the Bihar Staff Selection Commission shall take any decision with the approval of Principal Secretary of Education Department. In case of difference of opinion between the two functionaries, namely, Director, Primary Education and Secretary to the Bihar Staff Selection Commission, the decision taken by the Principal Secretary of the Education Department shall be final.

(ii) The Committee shall first issue notice in the newspaper for appearance of the 1929 candidates for counseling as per paragraph no. 7(a) of the counter affidavit filed in this case as has also been extracted earlier in paragraph no.28 of this judgment. Such counseling of 1929 candidates must be completed within a maximum period of three months and letter of appointment to the eligible candidates having prescribed qualification and fulfilling other eligibility conditions must be issued within one month of the date of completing the counselling.

(iii) The cases of 366 candidates again reflected in paragraph no. 7(c) of the counter affidavit shown to be pending also must be decided one way or the other within the same period of three months and those found eligible should also be given letter of appointment in next one month.

(iv) In the likewise manner, the Committee also must re-consider the case of 118 candidates not earlier found fit for appointment as again explained in paragraph no.7(b) of the counter affidavit and take a final decision in respect of them within the same period of three months and those found eligible among them should also be given letter of their appointment in next one month.

(v) Depending on the result of such exercise of fresh consideration of the cases of aforesaid 2413 candidates who were either absent during counseling or whose cases for appointment was kept pending or whose cases earlier was not found fit for appointment as explained in paragraph no.7 of the counter affidavit and upon issuance of appointment letters to those found eligible, they shall be given one month's time for joining their post from their date of issuance of their appointment letter inserting a clause that if they do not join their post within the prescribed period, they shall forfeit their claim for appointment against 2413 posts for once and ever.

(vi) The Committee on expiry of the period of one month for joining of the eligible appointment from amongst aforesaid 2413 candidates shall obtain a district wise report of their joining in next one month and reascertain the position of left over vacancy on 2413 posts.

(vii) The Committee having taken the aforesaid steps



and completed the exercise for considering the 2413 posts and on being reported the number of actual number candidates who had ultimately submitted their joining will re-ascertain the number of vacant posts in the respective subject category and would publish them in the newspaper as also on its official website inviting claims in a prescribed format from the left over candidates whose applications were received in time by the Commission and had formed part of 123149 of the total applications received as shown in the report of Hon'ble Justice S.K. Chattopadhyay the Special Officer submitted to Apex Court.

(viii) This inviting of claim must be done by the Committee within three months of issuance of last appointment letter to the category of 2413 candidates giving a clear one month time to remaining candidates to submit their respective claim in writing in a prescribed format only by registered/ speed post. In no case any claim shall be entertained by receipt through hand in the department/commission.

(ix) The Committee only in exceptional cases and that too for reasons recorded in writing shall make any change in the seniority position in final panel of 94205 candidates as approved by the Apex Court on 13.10.2011 confining itself to make such correction in cases of clear clerical error or error of record or any other allied compelling reason. It is made clear that for such appointment only on the remaining vacancy after considering the cases of pending 2413 candidates, the revised merit list will be prepared not only in accordance with the terms and conditions set out in 2010 Rules and the advertisement but also in keeping with the statement made by the Respondents in paragraph no. 9(a) and 9(b) of the counter affidavit as also in the light of findings recorded in paragraphs 35 to 81 of this judgment.

(x) Such tentative revised merit list for the left over vacancies for each of the three subject teacher of general/ Urdu/Physical Training after considering the claims shall be published in newspaper and official website of the Education inviting objection and thereafter on considering such objection the revised merit list shall be finalized and made public both in newspaper and official website. This entire exercise however must be completed by the Committee within six months of publication of notice inviting the initial claim from the candidates.

(xi) It is from this revised panel for the limited number of vacancy left out after consideration of 2413 pending cases in the manner indicated above, that steps for appointment for left over vacancy will be completed within two months of publication of the final panel. In no event, such appointments however shall be made beyond the number of post for each

subject category which is 2007 for the general subject, 372 for Urdu teacher and 34 for Physical Trained Teacher as clearly stated before the Apex Court and this Court in the status report dated 30.08.2012 and the counter affidavit respectively.

21. Let it be noted that the aforementioned judgment in the case of **Kanti Kumari** (supra) has also been approved by the Division Bench of this Court in its judgment dated 24.03.2015, wherein it was held as follows:

"Therefore, the appeals are dismissed, upholding the judgment rendered by the learned single Judge in C.W.J.C. No. 17899 of 2012 and batch. It is, however, left open to the individual candidates to agitate their grievance before the Committee which, in turn, shall take the same into account, but shall stick to the same procedure that was followed in the selection of 32,127 teachers on the previous occasions."

22. Thus, in view of the directions given by this Court in the case of Kanti Kumari (supra) the case of the petitioners cannot be included for consideration of their appointment against the remaining 2413 posts of teacher, out of total 34540 posts of teacher, because neither the applications were received in time nor their names were included in any category of list prepared by Hon'ble Mr. Justice S.K.Chattopadhyaya and/or by the Apex Court.

23. Thus, in the light of the aforementioned discussions, this Court will have no difficulty in holding that the petitioners having failed to prove that their applications were duly delivered in the office of the Commission and were received before the last date by any authorised officer or employee of the Commission, cannot make out a case for their consideration for appointment on the remaining 2413

posts of teacher, which, as noted above, has to be filled up only from the candidates whose names have already been included in the panel as has been explained by this Court in the case of *Kanti Kumari* (supra).

24. That being so, this Court does not find any merit in these three writ applications and they are, accordingly, dismissed. There would, however, be no order as to costs.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 22nd May, 2015
A.F.R./Sujit/-

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