

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1602 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 2339 of 2014
Alongwith
Interlocutory Application No. 7272 of 2015**

1. Ramlil Paswan, S/o Late Palat Paswan, Trained Graduate Teacher, Middle School, Purushottampur, Block Morwa, District Samastipur.
2. Sanjay Kumar, S/o Devendra Paswan, Trained Graduate Teacher, Upgraded Middle School Khedutanr, Block Morwa, District Samastipur.
3. Sanjeev Kumar Jha, S/o Sri Upendra Narayan Jha, Trained Graduate Teacher, Middle School Chak Salem (Kanya), Block Patori, District Samastipur.

.... Petitioners/Appellants

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna..
2. The Director Primary Education, Department of Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
4. The District Primary Teachers Promotion Committee, Samastipur through its Chairman- cum -the District Education Officer, Samastipur.
5. The District Education Officer, Samastipur.
6. The District Programme Officer (Establishment), Samastipur.

.....Respondents/Respondents(1st Set)

7. Devendra Prasad Choudhary, S/o Sri Mahendra Choudhary, Trained Graduate Teacher, Upgraded Middle School Rahimpur, Block Rudauli, District Samastipur.
8. Ramanand Anuj, S/o Late Palat, Trained Graduate Teacher, Middle School, Dharmpur, Block Morwa, District Samastipur.
9. Pawan Kumar Safi, S/o Maheshwar Safi, Trained Graduate Teacher, Upgraded Middle School Paroria, Block Varisnagar, District Samastipur.
10. Vinod Kumar Thakur, S/o Late Fakira Thakur, Upgraded Middle School, Mathurapur, Block Tajpur, District Samastipur.
11. Ramchandra Mahto, S/o Sahdeo Mahto, Upgraded Middle School, Ramapur, maheshpur, Block Tajpur, District Samastipur.
12. Nagina Sahani, S/o Late Musan Sahani, Upgraded Middle School,



- Maura Khurd, Block Morwa, District Samastipur.
13. Parmeshwar Mahto, S/o Late Shivji Mahto Rajkiyakrit, Upgraded Middle School, Morwadih, Block Morwa, District Samastipur.
 14. Shankar Ram, S/o Late Baleshwar Ram, Upgraded Middle School, Dhanhar, Waris Nagar, District Samastipur.
 15. Janardan Prasad Singh, S/o Late Bathu Singh, Upgraded Middle School, Banbira, Chauthaiyan, Block Morwa, District Samastipur.
 16. Ramesh Kumar Sah, S/o Late Raj narayan Sah, Village + P.O. Shambhu Patti, District Samastipur.
 17. Kumari Sudha Jha, W/o Sri Jawahar Chaudhary, Upgraded Middle School Charwaha, Godhiyari, Block Morwa, District Simastipur.
 18. Sudha Kumari, W/o Jitendra Kumar Singh, Upgraded Middle School Morwadih, Block Morwa, District Samastipur.
 19. Arjun Rai, S/o Late Ramdeo Rai, Upgraded Middle School Mirzapur, Block Morwa, District Samastipur.
 20. Ashok Mahto, S/o Late Bindeshwar Mahto, Upgraded Middle School, Dharmapur Bandey, Block Mora, District Samastipur.
 21. Dev Narayan Paswan, S/o Late Bharosi Paswan, Upgraded Middle School Asharhi, Block Tajpur.
 22. Ram Dayal Ram, S/o Late Ramashish Ram, Upgraded Middle School Khedutanr, Block Morwa, District Samastipur.
 23. Ram Chandra Ram, S/o Late Chaitu Ram Upgraded Middle School, Patla, Block- Chhaurahi, District- Begusarai..... Respondents/Respondents (2nd Set).
 24. The Regional Deputy Director of Education, Munger Division, Munger.
 25. The District Primary Teachers Promotion Committee, Begusarai through its Chairman-cum-the District Education Officer, Begusarai.
 26. The District Education Officer, Begusarai.
 27. The District Programme Officer (Establishment), Begusarai.

.... Respondents/Respondents(3rd Set)

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Appearance :

For the Appellants : Mr. Purushattam Kumar Jha and Mr. Avanindra Kumar Jha, Advocates.

For the Respondents : Mr. Rakesh Kr. Shrivastava, A.C. to G.P. 15.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 17.02.2017



Re.: Interlocutory Application No. 7272 of 2015.

The application for condonation of delay of 67 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re. : Letters Patent Appeal No. 1602 of 2015.

In the present Letters Patent Appeal, the challenge is limited to the part of the order passed by the Learned Single Bench of this Court on 22.04.2015 in CWJC No. 2339 of 2014, whereunder the learned Single Bench has observed thus:

“The court, therefore, agrees with the stand taken by the State that for Graduate Teachers the waiver is only with regard to non-acquisition of the Post Graduate Degree but the ‘Kalawadhi’ cannot be waived or diluted.”

The above referred observation of the learned Single Bench is the subject-matter of the present appeal.

The appellants besides others, by filing CWJC No. 2339 of



2014 approached the Learned Single Bench of this Court, seeking reliefs, which read thus:

(i) To hold and declare that the executive order issued under the signature of the District Programme Officer, Samastipur, as contained in Letter No. 59 dated 04.01.2014 (Annexure-2), whereby and whereunder the authorities concern have limited/restricted the applicability of the Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011, (One time relaxation for promotion to the post of Headmaster) only to those Trained Graduate Teachers, who have educational qualification of P.G., is contrary to provisions of one time relaxation as laid down in Rule 10 of Bihar State Elementary School Teachers Promotion Rules, 2011, is bad in law and on facts.

(ii) To hold and declare that the action of the authorities concern of the District of Begusarai, which are akin to the action of the authorities concern of Samastipur, whereby they have limited/restricted the applicability of the Rule 10 of Bihar State Elementary School Teachers Promotion Rules, 2011 (One time relaxation for promotion to the post of Headmaster) only



to those Trained Graduate Teachers, who have educational qualification of P.G., is contrary to provisions of one time relaxation as laid down in Rule 10 of Bihar State Elementary School Teachers Promotion Rules, 2011.

(iii) To hold and declare that in view of Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011 (Annexure-1) to this writ petition, the writ petitioners deserves for being considered for their promotion on the post of Headmaster.

(iv) To hold and declare that the action of the authorities concern in limiting the applicability of Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011 (one time relaxation for promotion to the post of Headmaster) only to those Trained Graduate Teachers, who have educational qualification of P.G., are violative Articles 14, 16 and 21 of the Constitution of India.

AND CONSUEQUENT UPON SUCH DECLARATION

(V) Issuance of an order, Direction, or a writ in the nature of Mandamus commanding the respondents concerned to



consider the writ petitioners for the promotion on the post of Headmaster, as per the provisions, Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011, and thereafter, grant them promotion on the post of Headmaster.

(vi) For grant of any other relief or reliefs to which the petitioners may be found entitled to, in the facts and circumstances of this case.

It appears from the record that out of 20 petitioners of CWJC No. 2339 of 2014, only three petitioners are appellants herein, with the limited grievance against the part of the order dated 22.04.2015 of the Learned Single Bench, as indicated above.

The background facts giving rise the present appeal are that all the petitioners having granted promotion as Graduate Teachers with effect from 29.12.2012, except petitioner no.20 Ramchandra Ram, who was granted promotion as Graduate Teacher and joined the promotional post on 21.12.2012. All the petitioners had completed one year of service in Grade-III Graduate Teacher by 31.12.2013, which had been fixed as cut-off date for promotion, to the post of Headmaster in the Middle School. In the District of Samastipur, approximately 777 teachers were granted promotion as Graduate Teacher Grade-III vide different Memo Nos. dated 29.12.2012, out of



which approximately 430 teachers, having qualification of Post Graduation. The further contention of the petitioners was that the total sanctioned post of Headmaster in the Samastipur district are around 907, out of which approximately 873 sanctioned post are lying vacant and only around 430 Graduate Teachers having Post Graduate qualification and they are within the zone of consideration for promotion on the post of Headmaster. If all the Graduate Teachers having qualification of Post Graduation, are considered for promotion to the post of Headmaster, in spite of that about 443 sanctioned post of Headmaster would remain vacant. The District Programme Officer, Samastipur issued letter no. 59 dated 04.01.2014, by which applicability of Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011, have been restricted to those Graduate Teachers only, who having qualification of Post Graduation and the said letter of District Programme Officer, Samastipur is contrary and against the letters and spirit of Rule 10 of the said Rules. The petitioners represented before the concerned authorities on 09.01.2014 but they did not pay any heed.

The respondent nos.6 and 5 filed counter affidavit and supplementary counter affidavit respectively before the Learned Singh Bench contending therein that the Director, Primary Education, Bihar, vide Memo No. 342 dated 11.12.2012, had issued clarification in



respect of 'one time relaxation' provided in Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011, vide departmental notification no. 697 dated 15.10.2012, accordingly, such Graduate Teachers who having qualification of Post Graduation are entitled to, grant of 'one time relaxation' in 'service-period' for promotion on the post of Headmaster. The clarification of the Director, Primary Education, contained in Memo No. 342 dated 11.12.2012 had been brought on record vide Annexure-A to the counter affidavit. The contention of the State respondents was that in light of Annexure-A to the counter affidavit, the writ petitioners having no qualification of Post Graduation, were not entitled for grant of promotion to the post of Headmaster. By way of supplementary counter affidavit, it was contending that Rule 9 of the Promotion Rules, 2011, provides that in case of non-availability of required numbers of eligible teacher having Post-Gradation degree in Grade-I (Grade Pay of Rs. 4800/-) and Grade-II (Grade Pay of Rs. 4600/-), promotion would be extended to such teachers of Grade-III (Grade Pay of Rs. 4200/-), who have completed 'service-period' of four years in Grade-III and possess Post-Graduation degree. Referring to Rule 10 of Promotion Rules, 2011, it was contended that 'one time relaxation' is to be granted in 'service-period' in case of such teachers only, who having qualification of Post Graduation and 'one time relaxation' in



qualification would be given only to those Graduate teachers, who must have completed four years in Grade-III. Accordingly, in terms of Annexures-B, C and D to the counter affidavit, which are clarification to the Rule 10, relating to 'one time relaxation' made by the Director, Primary Education, such Graduate Teachers of Grade-III would be entitled for relaxation in qualification but not in 'service-period', for promotion to the post of Headmaster. The last contention of the respondents was that since the petitioners do not have Post Graduation degree and they are Grade-III Graduate teachers but have not completed four years 'service-period' in terms of Rule 10 of the promotion Rules, 2011, as such they are not entitled for grant of promotion to the post of Headmaster.

At this juncture, it would be appropriate to examine Rule 10 of the Bihar State Elementary School Teachers Promotion Rules, 2011,(hereinafter referred to as 'the Rule') which stipulates about the promotion on the post of Headmaster in the Middle School, providing relaxation in eligibility as 'one time measure'.

The relevant Rule 10 of 'the Rule' has already been reproduced in the order under challenge, passed by the Learned Single Bench. From perusal of the said Rule and specially the expressions used therein, it is abundantly clear that two types of relaxation, in



eligibility criteria, as a 'one time measure' have been provided, one regarding the relaxation of 'service-period' and another about the relaxation of qualification, for the purposes of promotion to the post of Headmaster.

We may also take notice of the Rule 9 of the Rule, which talks about the promotion on the post of Headmaster in the Middle School. In terms of the said Rule, Graduate Teachers of the Grade-I and Grade-II, having qualification of Post Graduation, would be considered, on the basis of seniority, for promotion on the post of Headmaster in the Middle School and if required numbers of Graduate Teachers of Grade-I and Grade-II, be not available, then Graduate Teachers of Grade-III, who have completed four years of service in Grade-III, would also be considered for promotion on the post of Headmaster. Thus Rule 9 only talks about Graduate Teachers of Grade-I and Grade-II, having qualification of Post Graduation and Graduate Teachers of Grade-III, having qualification of Post Graduation with a further condition of completing four years of service in that Grade, being eligible for promotion on the post of Headmaster in the Middle School. The Rule 9, nowhere, indicates that Graduate Teachers of Grade-I, II and III, who having not Post Graduate qualification, are even eligible for promotion on the post of



Headmaster in the Middle School.

The Rule 10 of 'the Rule' talks about relaxation in qualification, as also, in 'service-period', as 'one time measure' for the promotion on the post of Headmaster in the Middle School. It provides that the Graduate Teachers of Grade-III, having completed one year of service in Grade-III may be considered, granting relaxation in 'service-period' as 'one time measure' for promotion on the post of Headmaster, by the department. Similarly, it further provides that if, Graduate Teachers of Grade-III, having Post Graduate qualification and being completed one year service in that Grade are not available in the required numbers then the department can grant relaxation of qualification of Post Graduation for Graduate Teachers as 'one time measure' but at the same time, the Rule 10, nowhere indicates that prescribed 'service-period, of four years, would be relaxed also as 'one time measure', to grant promotion to the Graduate Teachers on the post of Headmaster of the Middle School.

Therefore, we are also of the view that such Graduate Teachers, who having not Post Graduate qualification and being not completed four years of service as Grade-III Graduate Teacher, are not eligible to be considered for promotion on the post of Headmaster,



in the Middle School in terms of ‘the Rule’.

In view of the discussion made above, we do not find any error in the order passed by the Learned Single Bench, which may warrant interference in the present Letters Patent Appeal. The Letters Patent Appeal is, thus, dismissed.

(Sudhir Singh, J)

(Hemant Gupta, ACJ) I agree.

(Hemant Gupta, ACJ)

U.K./-

AFR/NAFR	AFR
CAV DATE	06.02.2017
Uploading Date	17.02.2017
Transmission Date	

