

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6152 of 1991

1. Madhav Mishra Son of Sri Jagdish Mishra Resident of Village- Matuk Chapra, Police Station- Siwan Muffasil, Distt. Saran at Present Head Master Govt. Primary School, Habibnagar, Police Station Hussainganj, Distt. Siwan.
2. Kusum Srivastava Wife of Sri Kamlesh Chandra Srivastava Resident of Mohalla- Shashtrinagar Siwan, Police Station- Siwan, Distt. Siwan at Present Assistant Teacher, Govt. Primary School Surapur- Chapia Police Station- Hussainganj, Distt. Siwan.
3. Baikunth Tiwary Son of Shri Chhat Narain Tiwari Resident of Village- Papaur, P.S. Pachrukhi, Distt. Siwan at Present Assistant Teacher, Govt. Middle School, Hussainganj, P.S. Hussainganj, Distt. Siwan.
4. Ganesh Tiwary Son of Ram Janam Tiwary Resident of Mutuk Chapra, P.S. Siwan Mufassil, Distt. Siwan. At Present Head Master, Govt. Primary School, Renua, P.S. Siwan Muffassil, Distt. Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Siwan, P.S. & Distt- Siwan.
2. District Superintendent of Education, Siwan.
3. District Education Officer, Siwan.
4. District Development Commissioner, Siwan. Sl. 2 to 4 all P.S. Siwan Distt- Siwan.
5. Bishundeo Dubey, Son of Name not known, Madhya Vidyalaya, Pachrukhi, P.S.- Pachrukhi, Distt- Siwan.
6. Nand Lal Prasad, Son of name not known, Madhya Vidyalaya, Titara, Police Station- Mairwa, Distt- Siwan.
7. Radhan Tiwary, Son of Name not known, Madhya Vidyalaya, Mahual Mahal, P.S.- Daraunda, Distt- Siwan.
8. Hadish Mian, Son of Name not known, Madhya Vidyalaya, Karanpura, P.S.- Goreakothi, Distt- Siwan.
9. Nandji Bharti, Son of Name not Known, Madhya Vidyalaya, Hussainganj, P.S.- Hussainganj, Distt- Siwan.
10. Rama Shankar Prasad, Son of Name not known, Madhya Vidyalaya, Lohganjar, P.S. Ander, Distt- Siwan.
11. Panchanand Mishra, Son of Name not known, Madhya Vidyalaya, Jogapur, P.S.- Barharia, Distt- Siwan.
12. Fanindra Mohan Sinha, Son of Name not known Madhya Vidyalaya, Raghunathpur, P.S.- Raghunathpur, Distt- Siwan.
13. Kamlesh Ojha, Son of Name not known, Rajkiya Prathmik Vidyalaya, Kameshwari Sanskrit Pathshala, Siwan, P.S. Siwan, Distt- Siwan.
14. Digvijay Pandey, Son of Name not known, Govt. Primary School, Bharthul, P.S.- Mairwa, Distt- Siwan.
15. Sudarshan Rai, Son of Name not Known, Govt. Primary School, Mardapur, P.S.- Siwan Mufassil, District- Siwan.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
Ms. Ranjeeta Singh, Advocate
Mr. Kundan Kumar, Advocate
For the Respondent/s : Mr. Chittranjan Sinha, (Sr, Advocate Paag-2)
Ms. Ratna Kumari (Adv.) Ac to Paag-2

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT**

Date : 25-06-2018

This writ petition was admitted vide order dated 18.05.1992.

It was placed for hearing on 23.3.2011 and the same was dismissed for non-prosecution. Subsequently, the writ petition was restored to its original file vide order dated 25.5.2017.

2.The grievance of the writ petitioners in the present writ petition is that he filed the present writ petition in the year 1991 against rejection of their representation dated 4.4.1991 for grant of appropriate pay scale in promotion on the basis of their qualification and seniority in the primary and middle schools. After filing of the writ petition, certain development has taken place. In 1993 in exercise of power under proviso to Article 309 the State Government framed promotion Rules namely, Bihar Takeover Elementary including the Teachers Promotion Rules 1992.

3.Under the aforesaid Rules, which came into force with effect from 1.1.1996, scheme has been framed for grant of promotion from one grade to another grade on completion of Kalawadhi.



4. There was dispute as to the inter se seniority of Arts and Science Teachers and after series of litigation and noticing the conflicting decision on the point the matter of was referred to the Full Bench in the case of Ram Nath Prasad Singh Vs. State of Bihar. The Full Bench of Patna High Court finally decided as to the reckoning of seniority for grant of graduate trained scale. The relevant part of the decision is quoted for ready reference:-

4. To understand how the Science teachers were categorized separately, we have to consider the short history of the same. We mention in this judgment mainly the annexures referred to in CWJC No. 1283/97 and LPA No.985/96. Before 1968, there was no separate quota/unit for appointment of teachers for teaching the Science subject in the schools. The teachers appointed had to teach all the subjects according to the requirement. The Government felt the need to appoint teachers to teach Science in the schools. Teachers qualified in that subject were found necessary. By Annexure - 1 dated 30.11.1968, the Government, for the first time, directed appointment of Science teachers in all the schools for teaching the Science subject.

By Annexure - 2 dated 5.1.1973, the Government decided to appoint Science teachers separately creating the post of Science teacher and reserve 25% of the total strength of teachers to be appointed as Science teachers directly in I.Sc. grade. By letter dated 26.6.1973, the Government sanctioned certain posts fixing the stipend of Rs.150/- for Matriculate Science teachers and Rs.175/- for I. Sc. trained teachers, on the basis of a UNICEF programme. The Government, by Annexure - 4 dated 10.9.1973,



fixed eligibility criteria for appointment as Science teachers. The said letter was modified on 15.9.1973 (Annexure - 5) to the extent that 25% Science teachers can be appointed and in the absence of the qualified candidates, persons who have passed matriculation or higher secondary with Science subject can be considered. By Annexure - 6 dated 18.9.1975, the Government sanctioned 2500 posts of I.Sc. trained and 7700 matric trained Science teachers and were allowed directly the scale of I.Sc. under the special employment scheme. Since teachers were necessary to teach the Science subject, it was stated that if reserved category candidates are not available, untrained reserved candidates shall be appointed and in case of non-availability, the same has to be de-reserved. Having felt that Science teachers should be appointed to teach Science instead of Arts teachers, by letter dated 5.12.1979, the Government sanctioned 9000 posts of Primary teachers, out of which 2250 posts were sanctioned for inter-trained teachers reserving 50% for Science teachers, as could be seen from Annexure - 8. Again, by Annexure - 9 dated 20.2.1981, the Government sanctioned 2300 posts of Science teachers were sanctioned separately - 1150 I.Sc. trained teachers and 1150 graduate trained Science teachers. By Annexure - 10 notification dated 18.12.1984, the Government, by virtue of the powers conferred under Section 8 of the Bihar Non-Government Elementary School (Taking-Over of Control) Act, 1976 published guidelines with regard to appointment and promotion of teachers in supersession of all previous rules and the teachers were divided into three grades viz.

1. Matric trained teachers

2. Inter trained teachers, and



3. Graduate trained teachers.

It is also provided that the Science teachers in Grade-3 shall be Headmasters in primary schools. By Annexure - 11 dated 30.9.1986, 6475 posts of teachers were sanctioned, out of which 1200 were kept apart for inter-trained teachers and 1200 for graduate trained teachers. It was specifically stated that 50% of the posts are reserved only for Science teachers. On 18.12.1986, 4075 posts of teachers were sanctioned, out of which 1200 posts were kept apart for inter-trained teachers and 1200 were for graduate trained teachers. There also 50% posts were reserved for Science teachers and the remaining posts were reserved for matric trained teachers.

5. Statutory rules viz. The Bihar Taken Over Elementary School Teachers Promotion Rules 1993 (in short, the Promotion Rules 1993), were also framed in exercise of the powers conferred by the provisions of [Article 309](#) of the Constitution of India, by notification dated 9.1.1993 with retrospective effect from 1.1.1986, which would show that 50% of the total posts are reserved for inter-trained and graduate trained Science teachers alone and that the Science teachers have got separate and independent identity. In Rule 2 of the Promotion Rules 1993, Grades 1 to 8 are defined as under: -

(2) _Grade' means scale.

(3) _Grade-1' means Matric Trained Basic Scale-(1200-2040) (4) _Grade-2' means Matric Trained Senior Scale-(1400-2600) (5) _Grade-3' means Matric Trained Selection Grade-(1640-2900) (6) _Grade-4' means trained Arts Graduate Scale Rs. (1640-2900) or Trained Science Graduate Scale (1640-2900) (7) _Grade-5' means Trained graduate Senior Scale Rs. (2000-3500) (8) _Grade-6' means



Trained graduate Selection Scale Rs. (2200-4000)

(9) _Grade-7' means Middle School's Headmaster basic Scale Rs. (2000-3500).

(10) _Grade-8' means Middle School's Headmaster Senior Scale Rs.2200-4000)|| For Grade 4, Arts Graduate Scale and trained Science Graduate Scales are separately shown. With regard to promotion, Rule 4 of the Promotion Rules 1993 states as follows:

—4. Conditions for promotion: - The promotion of a teacher may only be considered on fulfilling the following:

- (1) He fulfills the minimum prescribed period of service for promotion;**
- (2) He possesses minimum prescribed educational qualification and training for promotion;**
- (3) There must be a vacancy meant for the category to which he belongs S.C., S.T or general according to latest rules regarding reservation;**
- (4) He must be eligible for consideration for promotion on the basis of the seniority list against the available vacancies;**
- (5) His service is satisfactory.|| The minimum educational and training qualifications are mentioned in Rule 5.**

Availability of posts is stated in Rule 6 and Rule 7 states how the draft seniority list for promotion is to be published. Rule 7 reads as follows:

—7. Draft of seniority list for promotion:- By the end of the month of January of each year, the draft of the following seniority list, based on the position that existed on 31st of December of the previous year, shall be prepared according to the standard laid down in rule-8 by District Superintendent of Education in the following manner:

- (1) Seniority list no.1 (which shall be for promotion to grade-3). In this list, firstly those trained graduate teachers who have completed minimum**



12 years of service in grade-2, shall be placed; thereafter those matric trained teachers, who have completed minimum 18 years of service in grade-2 shall be placed;

(2) Seniority list no.2 (which shall be for promotion to Grade-4)--(i) This list shall be prepared separately for arts and science teachers. (ii) The teachers shall be placed in this list in the following order:

(a) Trained graduate working in Grade-3;

(b) Trained graduate working in Grade-2;

(c) Trained graduate working in Grade-1 and who have completed minimum 8 years of service in Grade-1.

(3) Seniority list no.3 (which shall be for promotion to Grade-6)--(i) This list shall not be prepared separately for arts and science teachers but for both a consolidated list shall be prepared; (ii) In this list, firstly those trained Post-graduate teachers who have completed minimum 12 years of service in Grade-5 shall be placed. Thereafter those trained graduate teachers who have completed 18 years of service in Grade-5 shall be placed.

(4) Seniority list no.4 (which shall be for promotion to grade-7 and to grade-8)--

(i) This list shall not be prepared separately for Arts and Science teachers but for both a consolidated list shall be prepared.

(ii) In this list teachers shall be placed in the following order:

(a) Trained Post-graduate teachers working in Grade-6;

(b) Trained post-graduate teachers working in Grade-5;

(c) Post graduate trained teachers working in Grade-4 and who have completed minimum 5 years of service in Grade-4:



Provided graduate trained teachers of SC and ST category shall be placed after post graduate teachers if post-graduate teachers of these categories are not available upto 31st December 1994;

(iii) From this list teachers working in Grade-4 and Grade-5 may be promoted to Grade-7 and teachers working in Grade-6 may be promoted direct to Grade-8. It clearly shows that seniority list No.2 has to be prepared separately for Arts and Science teachers for promotion to Grade 4, whereas for seniority list No.3, which is for promotion to Grade 6, only a consolidated list shall be prepared. Seniority list No.4 which is for promotion to Grade 7 and 8, is also to be prepared on the basis of a combined list.

6. In CWJC Nos.3475/88, 6594/88 and 1239/91, a Division Bench of this Court by common judgment dated 8.4.1993 held that the notifications issued under Section 8 of the Act provide separate scale for Science teachers and not invalid as the State has jurisdiction to issue executive instructions under [Article 162](#) of the Constitution of India. The writ petitions filed by the Arts teachers for parity with Science teachers irrespective of grade were dismissed. In the said case, the petitioners questioned the promotion of Science teachers as Headmasters as those Science teachers were working in higher grades at the time of promotion. It was further directed that in the vacancies of posts with higher grade available for Art teachers, promotions shall be effected immediately. Such instructions, in the absence of any rule, have also got the force of law. The above decision was upheld on merit by the Supreme Court while dismissing SLP (Civil) - CC 5618/96 on 28.10.1996.



Anyway, the notification considered in the above case was replaced by the Promotion Rules 1993 and it made a clear distinction between Science teachers and Arts teachers and proposed that two separate seniority lists for Arts and Science teachers shall be prepared for promotion to Grade 4. A consolidated list has to be created for promotion in Grades 6 to 8.

7. In Naresh Jha's case (supra), it was held that there is no separate cadre created for Arts and Science teachers. Rule 12 of the Bihar Service Code defines that the cadre means the strength of the service or a part of service sanctioned as a separate unit. Therefore, even though promotion rules had been framed and it referred to separate seniority list, it was held that the classification between Arts and Science was not correct. Therefore, it was held that the classification between Arts and Science teachers, in the absence of creation of a separate cadre is arbitrary. It is pertinent to note that the Bihar Taken over Elementary School Teachers Promotion Rules 1993 was not set aside. In fact, the said Rules were not even challenged. The learned single Judge, while referring the matter, noticed that as per Rule 12 of the Bihar Service Code, cadre means the strength of the service or a part of service sanctioned as a separate unit and, therefore, the view appears to be not correct. Rule 12 itself recognised part of service sanctioned as a separate unit as cadre. We have seen that while filling up the vacancies of Science teachers, the Arts teachers cannot be promoted. But to be promoted as Headmasters, seniority in the higher grade alone need be considered as both Arts and Science teachers working in Grade - 4 will get opportunity for promotion as Headmasters. Date of appointment at the entry level cannot be the criteria for promotion to the post of Headmaster. Teachers working in matric



scale cannot over-take teachers working in graduate scale for the purpose of promotion as Headmasters. The earlier Government orders before framing the Rules were approved by this Court in the judgment dated 8.8.1997 in CWJC No. 3475 of 1988 and connected cases and approved by the apex Court. In fact, it can be seen that while sanctioning posts, separate scales were given for Arts and Science teachers. It was specifically mentioned that percentage should be maintained for matric trained teachers and graduate trained teachers. Therefore, it is a distinct part/unit of the cadre and there is nothing wrong in having a separate promotion list for Science teachers upto Grade 4. Teachers are required in the schools for teaching Science and they are appointed for that purpose. Both categories will get promotion upto the Grade 4 depending upon the vacancies allotted to the respective category.

But after Grade 4, as mentioned in the promotion rule, there can only be a consolidated list. We are of the view that the Promotion Rules 1993 referred above is not unconstitutional. It was not held to be bad in Naresh Jha's case (supra) also.

The above judgment is not challenged in any of the writ petitions. The Promotion Rules 1993 was accepted and acted upon in Uma Kant Yahi's case (supra).

8. The learned Advocate General pointed out that in view of the direction of the Division Bench, a consolidated list was prepared without any distinction between Arts and Science teachers and fresh rules were framed (but not implemented) only because of the directions of the Division Bench in Naresh Jha's case (supra) and due to urgency of the matter but subject to the orders of the Court in these cases. In view of the interim order, it has not



been finalised. We are of the view that the direction of the Division Bench in Naresh Jha's case (supra), without setting aside the valid Promotion Rules 1993 was not correct. We overrule the same. It is for the Government to make separate lists of qualified teachers for both Science and Arts subjects as per the quota/unit fixed for promotion to Grade 4 and promotions can be made separately depending upon quota fixed for promotion among the Arts and Science teachers. But, after Grade 4, a common seniority list is to be prepared for promotion, so that both Arts and Science teachers could become Headmasters based on such common seniority list as prescribed in the Promotion Rules 1993.

9. In the light of the above, we are of the view that a fresh seniority list has to be prepared in accordance with the Promotion Rules 1993 and the joint seniority list prepared in accordance with the directions of the Division Bench in Naresh Jha's case (supra) and the draft Rules created in 2006 subject to the approval of this Court with regard to promotions cannot be acted upon. We direct the Government to prepare a fresh list and make consequential promotions and transfers according to law. No separate orders are necessary. In view of the interim order of status quo granted, promotions were not made for the last 10 years. In the above circumstances, we direct the Government to make separate seniority lists for promotion to Grade 4 for Arts and Science teachers afresh and thereafter to prepare a consolidated list for promotion as expeditiously as possible. The draft list should be published within three months from the date of receipt of a copy of this judgment and the final seniority list shall be thereafter published and promotions and transfers made in accordance with law.



5. After judgment of the Full Bench the controversy whether there should be a combined gradation list for grant of graduate scale was finally decided and set at rest. Full bench issued direction to the respondents to prepare gradation list in accordance with 1993 Rules.

6. In view of the aforesaid development the issue raised in the present writ application has now become academic. When the Full Bench has settled the law for preparation of seniority list of Arts and Science Teachers for grant of graduate trained scale and directed preparation of seniority list in terms of 1993 promotion Rules, the respondents are obliged to work out the benefit admissible to the petitioners in accordance with 1993 promotion Rules where definite scheme has been framed for grant of promotion from one grade to another grade.

7. In addition thereto, once the Full Bench has decided to prepare seniority list for Arts and Science teachers, the respondents are under obligation to act strictly in accordance with law laid down by the Full Bench.

8. The present writ application is pending for the last 27 years.

9. In view of the above, the writ petition is disposed of with direction to the respondents to act in accordance with the principle



discussed and decided by the Full Bench in Ramnath Prasad Singh case (Supra) if not already decided within a maximum period of two months from the date of receipt/production of a copy of this order.

10. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.07.2018
Transmission Date	

